121-183

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 285.

Z. N. ESTES AND J. H. DOAN, PARTNERS AS ESTES AND DOAN, APPELLANTS,

vs.

S. H. GUNTER, BECKHAM AND MOORE ET AL.

APPEAL FROM THE ~~CIRCUIT~~ District COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED SEPTEMBER 5, 1884.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	4	1
Exhibit A—Deed of assignment from S. H. Gunter to S. G. Spain, March 25, 1882	16	7
Schedule A—Statement of exempt property	20	9
B— " real property	20	9
C— " personal property, &c.	21	9
Fiat	36	19
Decree appointing receiver	36	20
Injunction bond	38	21
Writ of injunction	39	21
Marshal's return	40	22
Decree appointing new receiver	41	22
Bond of receiver	42	23
Answer	43	24
Replication	48	26
Evidence for complainants	48	26
Testimony of Z. N. Estes	49	27
J. H. Doan	59	32
S. S. Spicer	60	33
J. M. Maury	62	34
Exhibit A (Estes)—Account of S. H. Gunter with Estes, Doan & Co.	65	36

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Motion to remand to rules to take proofs, &c.	81	48
Order granting leave to take proof, &c.	81	49
Evidence for defendants	82	49
Testimony of Walter Carlton	82	50
W. A. Dugger	85	51
E. A. Carlton	90	54
Evidence for complainants	100	59
Testimony of S. G. Spain	100	59
Exhibit A (Spain.—Bill of Estes, Doan & Co. against S. H. Gunter, February 8, 1882	114	67
Testimony of S. H. Gunter	114	67
Agreement as to facts	126	74
Deed of trust from Gunter to Booth *et al.*, March 25, 1882	127	74
Agreement as to time to take proofs, &c.	131	78
Account with receiver	132	78
Bond of Estes, Doan & Co. for money withdrawn	132	78
Order of dismissal as to certain parties	134	79
Decree *pro confesso* as to S. G. Spain	135	80
Final decree	136	80
Bill of costs	136	80
Order granting leave to file petition for rehearing	137	81
Order to refund money	137	81
Bond	138	81
Order allowing appeal, &c.	140	83
Clerk's certificate to record	141	83
Opinion	142	84
Clerk's certificate to opinion	151	88

1, 2, & 3 UNITED STATES DISTRICT COURT,
Northern District of Mississippi:

Proceedings had in the district court of the United States for the western division of the northern district of Mississippi, begun and held for its June term, A. D. 1882, at the court-house in Oxford, Miss., on, to wit, —, in the following cause:

ESTES, DOAN & CO.

vs.

S. G. SPAIN, Assignee, &c., *et al.*

Mess. Wright, Fulkes & Wright, and Taylor & Kyle, & Hall & Boothe, complainants' solicitors, and Sullivan & Sullivan and Lamar, Mayes & Branhan, defendants' solicitors.

4 *O. Bill.*

UNITED STATES OF AMERICA, *Northern District of Mississippi:*

Z. N. ESTES and JAMES H. DOANE, Merchants & Copartners Doing Business Under the Firm Name of Estes, Doane & Co., Citizens of the State of Tennessee, Complainants,

vs.

S. G. SPAIN, a Citizen of the State of Mississippi; BIEKHAM & MOORE, Citizens of the State of Louisiana; J. F. Frank, Surviving Partner of the Firm of J. F. Frank & Co.; H. T. Lemmon & Tom Gale, Surviving Partner of the Firm of Joyner, Lemmon & Gale; I. M. Hill & — Mitchell, Composing the Firm of Hill & Mitchell; Oliver Finnie & Co., S. C. Toof & Co., Walter Langstaff & Co., Wills & Moffatt, Wills & Wilderberg, Ames Beattie & Co., W. N. Wilkerson, Friedman Bros., Brown & Jones, B. Lowenstein & Bros., Ultathorne & Co., Hill, Standish & Co., Graham, Cousins & Co., Citizens of Tennessee; Edwin Balts & Co., J. Frank & Co., Wornthalt, Whithead, Wiseman & Co., Morris, Woodruff & Co., P. Pfefer & Co., Seligman, Nassauer & Co., G. W. Helm, Whetfield, Powers & Co., Weeks & Gelder, Citizens of the State of New York;
5 J. M. Robinson & Co., Robinson, Bros. & Co., Price & Lucas, Citizens of the State of Kentucky; Rice, Stix & Co., Citizens of the State of Missouri, Richardson, Denney & Co., Citizens of the State of Georgia, and Stix, Krouse & Co., Citizens of the State of Ohio.

To the Honorable Robert A. Hill, judge of the district court of the United States for said northern district of Mississippi, in equity sitting, at Oxford, in and for said district and sale presiding therein:

Humbly complaining, your orators, Z. N. Estes and James H. Doane, would show unto your honor that they are merchants & partners trading & doing business in the city of Memphis, State of

Tennessee, of which said State they are citizens & merchants, under the firm name & style of Estes, Doane & Co.; that one S. H. Gunter was until very recently a merchant, trading & doing business in the town of Sardis, in the county of Panola, & State of Mississippi, of which State he was and is a citizen & resident; that within the past few years your orators have sold to the said S. H. Gunter, mostly on credit, large quantities of goods, wares, merchandise, & supplies, and have advanced to him large sums of money, aggregating many thousands of dollars; and that on the twenty-fifth day of March, 1882, said S. H. Gunter was justly indebted to your orators in the sum of about twelve thousand dollars ($12,000.00), due by open account, and that said sum is still due to your orators and is wholly unpaid.

6 Your orators would further show that, being a merchant doing a large business, the said S. H. Gunter became indebted to divers other persons who are defendants to this bill, as hereinafter set forth, for sundry goods, wares, and merchandise sold by said defendants to said Gunter, and for balances due upon commercial transactions with some of said defendants at a period previous to the date when he began to deal with your orators; that said Gunter became heavily involved in debt and was unable to pay all of his creditors in full, as your orators are informed & believed and charge the fact to be, and that, being so involved and realizing his insolvency, the said Gunter on the said 25th day of March, A. D. 1882, made a written assignment for the benefit of his creditors, to one S. G. Spain, which assignment purported to convey and did convey, as your orators are informed and believe, all the property of said Gunter, except that which is by the laws of the State of Mississippi exempt from levy and sale for his debts (and which is scheduled and made an exhibit to said assignment), in trust, to said Spain, to be applied to the payment of said Gunter's debts according to the directions of said deed of assignment. The said property so conveyed consisted of a large stock of merchandise, invoicing about the sum of ten thousand dollars, but really not on the present market near so much, as your orators are

7 informed & believed, all the books of account, notes, accounts, choses in action, & debts due to said Gunter, some live stock and other personal property enumerated in the schedule of said assignment, and all the said Gunter's interest in certain real estate (save the exemptions aforesaid), as set forth in said schedules. Said assignment was duly recorded in the office of the chancery clerk of said county of Panola, State of Mississippi, at Sardis, for the first district of said county, and a copy of the same is herewith filed as Exhibit A and prayed to be made a part hereof, and the original or certified copy of said assignment will be produced at the hearing of this cause.

Your orators would further show that, by the terms of said assignment, certain creditors of said Gunter were preferred in the order of payment to others, and their claims were directed to be paid in full, with all lawful interest, before the payment of any other debts; that the creditors so preferred and to be paid in full by said S. G.

Spain, assignee as aforesaid, and the amounts so to be paid were as follows:

Defendants, B. Lowenstein & Bros.	$512 95
Defendants, Hill, Standish & Co.	659 10
Defendants, R. A. Patterson & Co.	273 25
Your orators, Estes, Doan & Co., to the amount on their debt of	10,000 00
Defendant, W. H. Wall	291 67
Bank of Sardis	1,000 00

8 And that after the payment of said preferred debts in full the said assignee was by said deed of assignment directed to pay all the other debts of said Gunter in full if the assets in hand were sufficient for that purpose, but that if said assets were not sufficient to pay said debts not preferred in full the funds or assets remaining were to be paid ratably in proportion to their respective debts to said unpreferred creditors.

Your orators are informed and believe, and so charge the fact to be, that said deed of assignment was executed by said S. H. Gunter in good faith and for the benefit of his creditors, as therein expressed, and that none of the acts of said Gunter in connection therewith were colorable or covinous, nor was there any intention on his part in any way to hinder, delay, or defraud his creditors, or any of them, in the said transactions, & that said assignment is valid & legal.

Your orators would further show that said assignee, S. G. Spain, accepted the trust conferred upon him by said deed of assignment and took possession of all the property therein conveyed to him, and was proceeding to execute said trust according to the tenor and effect thereof when he was prevented therefrom, and all of said property seized and taken out of his possession, as now herein shown.

Your orators would show, and so charge the fact to be, that shortly after said assign*ment* took possession of said property, to wit, on the 27th day of March, 1882, the defendants, Bickham & Moore, sued out an attachment in the district court of the United States
9 for the northern district of Mississippi against the said S. H. Gunter for the sum of three thousand dollars ($3,000.00), and caused said attachment to be levied upon a large part of the stock of merchandise in the hands of said assignee; that on the 28th day of March, 1882, the defendant, J. F. Frank, surviving partner of the firm of J. F. Frank & Co., also sued out an attachment in said court against said Gunter for the sum of seven thousand dollars; that on said last-named day the defendants, Hill & Mitchell, sued out their attachment in the court aforesaid against said Gunter for the sum of thirty-two hundred & seventy-eight dollars; that on said last-named day the defendants, H. L. Lemmon & Tom Gale, surving partners of the firm of Joyner, Lemmon & Gale, sued out their attachment in said court against said Gunter for the sum of forty-one hundred & eighty-five $\frac{40}{100}$ dollars, and that the plaintiffs in said three last-named attachment suits caused their writs to be levid simulta-

neously upon the balance of said stock of merchandise and all other property in the possession of said assignee which had not been levied upon under the said attachment of the defendants, Bickham & Moore, and all the property conveyed to said assignee by said assignment was taken out of his possession by the United States marshal, who levied all of said writs of attachment.

Your orators would further show that the officer who levied
10 said writs refused to deliver said property to the said assignee, S. G. Spain, or to permit him to retain possession of the same, unless the said assignee *shall* first enter into bonds in double the amount of the debts claimed to be due in said attachment suits, with good security, for the forthcoming of said property, to abide the result of said attachments, the aggregate amount of said bonds being nearly thirty-five thousand dollars, and that the property levied upon in the hands of said assignee is not worth altogether, as your orators are informed and believe & so charge the fact to be, near the aggregate amount claimed in said attachment suits, the sum so claimed being more than seventeen thousand dollars, and the property taken from said assignee constituting chiefly of books of account, notes, choses in action, & debts due said Gunter, all of uncertain value, & a large portion of them entirely valueless, and the stock of merchandise aforesaid, which, while valuable, could not possibly be made to bring anything like the invoice price thereof in the hands of any person except a merchant regularly engaged in trade & business, having time and opportunity to sell said stock at retail or in small lots upon such credit as is customary in the country, or unless sold as a whole to merchants.

Your orators are informed & believe and so charge that each of said attachment suits is based upon the fact that said Gunter made and executed the assignment aforesaid to the said Spain, it being maintained and asserted by said plaintiffs in said suits that
11 said assignment is fraudulent and in violation of the attachment laws of the State of Mississippi, and this your orators are informed, believe, and charge is the sole ground upon which said attachments are sued out. Your orators aver and show that the same question arises in each of said suits, to wit, whether or not said assignment is valid or fraudulent, and that this is the controlling and indeed the only question in each of said cases. Your orators aver that it would be inequitable and a great hardship upon them to require them or the assignee or other proper person representing them to appear as claimants in each of said attachment suits, inasmuch as it would involve great trouble, expense, and delay in the assertion of their rights & the rights of other creditors in the premises. Besides, as your orators have already shown, there are a large number of unpreferred creditors of the said Gunter, whose names are set forth in Exhibit E to said assignment, and who are liable to attach said property so assigned, and, as your orators are informed, believe, and charge, will do so whenever your orators or the assignee or other proper person representing them & other creditors bond said property so levied on and take the same into possession.

Your orators would further state that the said Spain, trustee as aforesaid, being as aforesaid hindered and prevented from executing the provisions of said assignment, is unwilling to incur the trouble, expense, and responsibility incident to the performance of the
12 duties required of him as such trustee, even if he were able to grant the necessary bonds, and has signified to your orators that he will not further consider himself in the execution of his said trust under said assignment, and that he cannot, and will not, take any steps looking to the assertion of his rights as such trustee, nor can or will he attempt to defend the validity of said assignment, and, in short, that he proposes to retire from and abandon his said trusteeship, and so far as he is concerned leaves the same unexecuted, and that your orators must take such steps as they deem best for their interests in the premises. Your orators are advised that their only remedy in view of said Spain's inability, declination, and failure to perform the duties incumbent on him as such trustee is to invoke the aid of your honor in the execution of said deed of assignment, and that without such aid they are remediless. Your orators are informed, believe, and charge that the said marshal proposes immediately to advertise all of the property so attached by him and sell the same after the expiration of ten days to the highest bidder for cash. Your orators are informed, believe, & charge that the said marshal will sell said goods in small lots, and will sell said notes and accounts entire, separately, or as a whole to the highest bidder; or will, under Mississippi statutes, proceed to garnish each and all of the debtors of said Gunter, said debtors being very
13 numerous, all of which involves great expense and delay, and besides will be ineffectual, as there will probably be no one to represent the interest of your orators other than beneficiaries in said assignment. Your orators are satisfied and charge that if said goods are sold in this way the result will be that they will not bring much, if any, more than half their value, by reason of the expenses incident to such a mode of sale, and the fact that at this time there is a great scarcity of ready money in the section of country around Sardis, from whence purchasers would necessarily come for said goods sold in the way above indicated, and that if said notes, books, debts, accounts, &c., are sold as above set forth they will bring little or nothing in comparison with their nominal amount and real value. Your orators show and charge that said stock of goods can be sold much cheaper and will realize a much larger sum if they are sold *en masse* & not at forced sale after advertisement in such a way as will inform the various creditors of said Gunter and merchants generally, and enable them to bid upon them; and, further, that said notes, books, debts, accounts, &c., can only be made valuable by the exercise of judgment and discretion on the part of the trustee or receiver appointed by your honor to execute the provisions of said assignment. In short, your orators aver that said goods and other assets cannot be sold advantageously save by the exercise of such methods as could not be adopted by said marshal, but which would be entirely possible if the same were in the hands and under
14 the direction of said trustee and receiver.

The premises considered, your orators pray that the parties named in the caption hereof as defendants be made parties defendant to this bill; to that end that the proper process issue commanding said defendants to appear at first day of the June term, A. D. 1882, of this honorable court and plead, answer, or demur to this bill; that your honor will be pleased to order the necessary writs of injunction to issue enjoining the said Bickham and Moore, J. F. Franks, Hill and Mitchell, H. T. Lemmon and Tom Gale, surviving partners of Joiner, Lemmon & Gale, from further prosecuting said attachment suits, and all others of said defendants from issuing any attachments, and attaching the property embraced in said assignment or in any manner whatsoever interfering therewith; that a new trustee or receiver may be appointed by your honor, with the necessary and proper power and instructions, for the administration of the trusts in said deed of assignment contained; that the said property embraced therein may be sold in such way as will be most advantageous for all the parties interested; that upon the hearing said deed of assignment may be declared in all respects legal and valid, and its provisions recognized and made effective by a decree satisfying your orators' preferred claims in full out of the fund realized from the administration of the trusts contained in said deed of assignment, and the balance, if any, be applied in accordance with the provisions of said assignment, and for all such other, further, and general relief as to your honor in the premises may seem meet & proper.

HALL & BOOTHE,
TAYLER & KYLE,
WRIGHT, FOLKES & WRIGHT,
Solicitors for Complainants.

Affidavit.

UNITED STATES OF AMERICA.

DISTRICT OF WEST TENNESSEE,
State of Tennessee, Shelby County:

Personally appeared before me, Hudson Cary, a commissioner of the circuit court of United States for said district, duly commissioned and sworn, residing in the city of Memphis, in the State of Tennessee, Jas. H. Doan, who made oath in due form of law that he is a member of the firm of Estes, Doan & Co., the complainants in the foregoing bill, and that the facts as stated in said bill as of his own knowledge are true, and those stated on information derived from others he believes to be true.

JAMES H. DOAN.

Subscribed and sworn to before me this 6 day of April, 1882.

In testimony whereof I have hereunto set my hand and affixed the official seal, at office, in the city of Memphis aforesaid, the day and year above written.

[L. S.]

HUDSON CARY,
Commissioner.

Filed April 17th, 1882.

G. R. HILL, *Clerk.*

16 And on the same day said bill was filed, to wit, 17 Apr. 1882, the following exhibit was filed.

Ex. A to bill.

Deed of Assignment.

This indenture, made this 25th day of March, A. D. 1882, between S. H. Gunter, of the county of Panola, State of Mississippi, of the first part, and S. G. Spain, also of said county and State, of the second part, witnesseth: That whereas the said party of the first part is justly indebted to sundry parties in divers and sundry sums of money, and, being unable to pay the same in full, is desirous of providing for the payment thereof by an assigment of his property and effects for said purpose: Now, therefore, this deed further witnesseth: That said party of the first part, in consideration of the premises and the sum of one dollar to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, delivered, and conveyed, and by these presents does grant, bargain, sell, assign, deliver, and convey, unto the said party of the second part, his successors and assigns, all and singular the lands, tenements, hereditaments, and appurtenances, goods, chattels, accounts, promissory notes, debts, choses in action, claims, demands, property, and effects of every description belonging to said party of the first part, or in which he has any interest, now due or payable or to become due or payable, to the party of the first part, except w-at are exempt to him by the laws of the State of Mississippi, the said exemptions being more fully and par-

17 ticularly enumerated and described in a schedule thereof, hereto annexed and marked Schedule A and made a part hereof; an inventory of the lands, tenements, hereditaments, and appurtenances granted, bargained, sold, assigned, delivered, and conveyed unto said party of the second part is herewith filed, marked Exhibit B, and made part of this assignment; an inventory of the accounts, promissory notes, choses in action, claims, demands, and other property conveyed is herewith filed, marked Exhibit C, and made a part of this assignment; and an inventory of the stock of goods, wares, and merchandise herein conveyed is to be made out as soon as practicable and attached hereto as Exhibit D and made part hereof; to have and to hold the same and every part thereof unto said party of the second part, his successors and assigns, in trust, nevertheless, and to and for the uses and purposes following: That the said party of the second part shall take possession of the said property hereby assigned or intended so to be and shall with all convenient diligence sell and dispose of the same at public or private sale as he may deem most beneficial to the interest of the creditors of said party of the first part and convert the same into money, and shall also, with all reasonable diligence, collect, get in, and recover all the said debts, dues, notes, accounts, claims, and

demands hereby assigned or intended to be, and with and out of the proceeds of said sales and collections that the said party of
18 the second part shall first pay and disburse all the just and reasonable costs, charges, and expenses attending the due execution of these presents and carrying into effect the trusts hereby created, together with a reasonable compensation for his own services, until the said property and effects hereby assigned shall be sold and disposed of, and with and out of the residue or net proceeds of such sale and collections shall pay and discharge the debts due and owing by the said party of the first part in the order and manner following—that is to say:

First. The said party of the second part shall pay all and singular the debts set forth and enumerated in schedule hereto annexed and marked Schedule "E," and designated in said schedule as class number one, the same to be paid with lawful costs and interest if the said proceeds shall be sufficient for that purpose, and if the same be not sufficient then the said party of the second part shall apply the net proceeds to and in the payment of the said debts ratably and in proportion to the respective amounts thereof.

Secondly. After the payment in full of the debts designated in Schedule "E" as class No. 1 in manner above directed the said party of the second part shall pay in full all and singular the debts enumerated and designated as class No. 2, and all other indebtedness due and owing by said party of the first part to any person or persons whomsoever if there be sufficient of the said net proceeds
19 remaining in his hands for that purpose, and if there be not sufficient then the said party of the second part shall apply the same as far as they will go for that purpose to and in the payment of the last-mentioned debts ratably and in proportion to the respective amounts thereof; and in furtherence of the premises the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover, and receive of and from all and every person or persons all property, debts, and demands due, owing, and belonging to the said party of the first part, and to give acquittances and discharges for the same, to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances, it being the intention of the party of the first part to include all his property of every character and all his debts in this instrument. If anything has been omitted by inadvertance or mistake said party of the second part is hereby authorized to place said property on the inventory of property not exempted, and the debts, if any, of the schedule of debts to which they respectively belong.

Witness my signature and seal this 25th day of March, 1882.

(Signed) S. H. GUNTER. [SEAL.]

The said party of the second part doth hereby accept the
20 trust created and reposed in him by this instrument.

Witness his hand and signature and seal the day and year first above written.

(Signed) S. G. SPAIN. [SEAL.]

THE STATE OF MISSISSIPPI, *Panola County:*

Chancery Court.

Before me, S. R. Blum, clerk of the chancery court of said county, this day personally appeared the above-named S. H. Gunter, who acknowledged that he signed, sealed, and delivered the foregoing deed of assignment on the day and year therein mentioned as his voluntary act and deed.

Given under my hand and seal of said court, at office, this 25th day of March, 1882.

S. R. BLUM, *Clerk.*

"A."—SCHEDULE OF EXEMPT PROPERTY.

Residence & lot in town of Sardis of the value of	$2,000 00
Household & kitchen furniture	230 00
2 cows	20 00

SCHEDULE "B."

One lot of land known and described as follows: Fractional two hundred (200) feet in the west part of lot five (5), block thirty-two (32), Juneata reservation, town of Sardis, Miss., conveyed by deed to S. H. Gunter by W. T. McCracken, August 26th, 1871	$200 00
One lot of land know- as lot (2) two, block (4) four, commencing (25) twenty-five feet from southeast 21 corner Ballentine & Wall's lot upon which their brick store-house stands; running thence south parallel with Belmont & Memphis road forty-five (45) feet; thence west to grounds of Miss. & Tenn. Railroad Company; thence north with said railroad grounds to the said lot of Ballentine & Wall; & thence east to place of beginning, all in the town of Sardis	500 00
One store-house on grounds of Miss. & Tenn. Railroad Company, in the town of Sardis, Miss., unexpired lease on same	500 00

All the above-described property conveyed subject to deed of trust to J. G. Hall, trustee, for the benefit of J. B. Boothe, J. H. Rice, & W. L. Carter.

SCHEDULE "C."

1 gray horse	$50 00
1 bay horse	50 00
8 head cattle	65 00
1 buggy	50 00
1 cream-colored horse	100 00
1 stock general merchandise in store-house on Main street, in town of Sardis, Miss.	12,000 00

22 SCHEDULE C. Notes.

Anderson, Ned., May 16, 1872	105 03
Armistead, Chas., April 16, 1875	145 42
Alexander, T. H., Feb'y 17, 1874	63 74
Armistead, Sam., M'ch 7, 1874	389 74
Anderson, Henry, Feb'y 3, 1874	12 23
Anderson, Dan'l, M'ch 10, 1875	80 30
Anderson, Dan., judgm't, 1875	64 09
Arnold, R. M. & W. E., Feb'y 12, 1877	25 57
Baker, J. A., Oct. 26, 1876	169 86
Bailey, W. W., Mc'h 19, 1877	1,200 00
Brahan, J. H., Feb'y 29, 1876	40 44
Bumell, W. T., " 16, 1876	28 06
Buchanan, R. M., " 20, 1875	392 27
Bobo, Simpson, " 20, 1873	46 73
Butler, Mose, " 7, 1879	22 94
Bobo, Banham, M'ch11, 1878	83 51
Brant, Orange, Aug. 24, 1874	305 41
Buchanan, J. R., M'ch 24, 1876	45 10
Beak, Cransell, & Nep. Johnson, Feb'y 12, 1878	151 10
Blann, A., M'ch 14, 1878	17 92
Cobb, John, Feb'y 26, 1872	104 72
Coleman, A. G., May 3, 1871	516 55
Clements, H. H., Mar. 21, 1877	55 10
Clements, H. H., Feb'y 6, 1878	63 97
Carter, M. D., Aug. 1, 1874	46 40
Cain, Y. C., Jan'y 28, 1876	22 35
Dickenson, S. C., M'ch 7, 1874	91 91
Dickey, D. E., Aug. 1, 1873	53 17
Dishman, Jno., M'ch 5, 1874	77 93
Dyson, Sam., M'ch 28, 1878	21 15
Emmory, Joe, judg't, " 22, 1875	111 90
Edmondson, Essex, 1 bale cotton, 500 lb, lent (estimated)	50 00
Ellis, D. A., M'ch 26, 1870	61 70
Echals, J. H., June 9, 1871	129 06
Echals, J. H., July 8, 1873	264 22
23 Edmonds, Bargo, June 1, 1874	10 50
Eckles, Thos. E. N., April 13, 1877	23 50
Fields, Alfred, June 7, 1876	106 05
Fields, E. C., Nov. 1, 1872	143 11
Fields, Horace, Oct. 1, 1874	211 38
Fitts, H. M., " 17, 1871	18 00
Gill, George, " 30, 1870	40 24
Gillespie, J. W., Jan'y 1, 1874	167 76
Grist, J. E., May 30, 1873	176 91
Greer, C. F., " 29, 1879	63 50
Gleason, C. H.	365 30
Hay, H. H., Jan'y 31, 1871	44 50
Hay, Martha F., M'ch 16, 1875	174 22
Harris, Sherman, Feb'y 15, 1878	37 42

	Hebler, Oliver, July 11, 1877	60 35
	Haynes, Henry, M'ch 11, 1876	32 79
	Harvey, Charles, April 4, 1876	66 17
	Harrison, Jno., Nov. 1, 1873	79 24
	Harris, Preston, M'ch 4, 1874	33 80
	Herning, E. O., Jan'y 1, 1874	94 80
	Herring, Dane, May 14, 1872	327 25
	Hardin, J. M., Nov. 7, 1871	37 85
	Hemphill, Dock, M'ch 14, 1874	27 25
	Joyun, Calim, Dec. 31, 1874	110 24
	Juey, J. W., M'ch 1, 1871	318 50
	Jones, A. A., Dec. 10, 1874	113 75
	Jennings, P. H., July 4, 1871	1,392 31
	Johnson, Alex., & R. A. Wooten, Jan'y 12, 1875	40 00
	Kehon, J. P., Oct. 10, 1874	833 02
	Keavmy, Enoch, Dec. 1, 1872	102 00
	Jones, Hence & J. Law, " 18, 1876	11 30
	Heflin, Ellen, & J. Law, Jan'y 1, 1874	18 25
	Lee, Jno., M'ch 18, 1876	34 83
	Morris, E. C., Feb'y 1, 1874	52 74
	Morris, E. C., Jan'y 29, 1878	60 00
	McCracken, Adolph, & M. W. Wilbourn, M'ch 24, 1872	25 00
24	Miller, W. D., Mat. Curry, Dec. 3, 1874	55 09
	Merriman, M. A., M'ch —, 1877	57 57
	Montgomery, J. D., May —, 1877	7 55
	McHenry, D. B., judgment	350 00
	Mornice, Louis, May 24, 1872	150 00
	Munius, Wm., M'ch 7, 1874	123 45
	Mallock, M., May 1, 1873	31 10
	Miller, Silas, Feb'y 26, 1875	78 55
	Martin, W. N., M'ch 10, 1871	10 00
	Miller, W. D., " 1, 1878	253 76
	Pailer, J. D., Jun., Jan'y 1, 1882	79 71
	Pollard & Lune, Feb'y 26, 1881	118 21
	Prince, Darius, M'ch 3, 1875	252 45
	Peany, Jno., Feb'y 23, 1878	64 30
	Pehro, Nathan, " 28, 1877	29 65
	Prince, Chas., M'ch 31, 1873	73 56
	" " " 7, 1874	186 45
	" " Jan'y 4, 1875	27 60
	Poriyen, Lewis, April 11, 1874	115 74
	Pehes, Chas., " 22, 1873	273 73
	Prince, Columbus, Jan'y 1, 1878	56 35
	Pettey, Edmond, M'ch 13, 1877	32 82
	Robertson, S. H., Apr. 3, 1875	60 46
	Rice, Ben., M'ch 18, 1878	51 60
	Smith, Phil., Jan'y 11, 1873	60 14
	Sarnels, J. R., Nov. 5, 1873	70 40
	Strond, J. M., Jan'y 22, 1872	43 65
	Scott, G. F., " 1, 1878	49 73

Struth, J. N., Dec. 1, 1879	287	31
Sampson, Sam., M'ch 15, 1872	40	00
Sorrals, Jno., Feb'y 9, 1872	75	28
Stund, W. D., Feb'y 24, 1876	69	20
Surry, Arch., Apr. 23, 1874	9	16
Thomas, C. M., M'ch 13, 1871	85	88
Tenney, Chas., Apr. 7, 1873	157	24
Thornton, H. E., Feb'y 14, 1876	297	70
25 Taylor, Hillus, Jan'y 23, 1875	50	00
Temel, W. G., Feb'y 11, 1876	32	35
Whith, B. N., Jan'y 7, 1878	76	06
Williams, J. L., Apr. 21, 1877	10	00
Welbourne, J. T., Apr. 4, 1878	26	25
Wall, Lem., " 7, 1874	289	36
Wright, Peter, Feb'y 10, 1874	146	00
White, Lawson, Jan'y 5, 1877	8	85
Webb, Alex., M'ch 9, 1874	125	00
" " " 14, 1876	121	91
Wooten, R. A., April 1, 1875	244	36
" H. R., Jan'y 21, 1876	85	45
Williams, Shark, Apr. 2, 1873	354	73
Wellar, M. H., Aug. 1, 1878	79	14
Williams, Louis, M'ch 1, 1878	32	50
Webb, Isom, M'ch 23, 1877	46	50
Young, A. F.	268	24
Pollard, W. B. M'ch 6, 1879	22	67
Powers, Chas., " 7, 1879	35	55
Moore, J. W., Nov. 19, 1879	2	40
Fanley, Booker, Feb'y 10, 1880	68	30
Dellashaw, Lem., Apr. 9, 1880	9	21
Robertson, W. O., Dec. 1, 1880	215	23
Tayler, S. A., Jan'y 3, 1881	66	95
Williams, S. N., " 12, "	32	50
Hudspith, D. S., Feb'y 21, "	23	53
Keaton, W. C., Jan'y 4, 1882	52	67
Lawson, Mil., Feb'y 17, 1882	98	89
Glasser, George, Feb'y 24, "	57	45
Chapman, C. F., M'ch 7, "	52	80
Hardell, W. R., Jan'y 22, 1878	73	78
Jemmes, J. M.	196	00
Glum, C. W., Jan'y 28, 1881	88	39
Donalson, George & Ben., Feb'y 21, 1881	10	84
McCallister, H. M., M'ch 8, 1881	50	08
Rosberry, C. C.	77	05
Law, Jonathan	50	08
	17,219	68

26 SCHEDULE "C"—Acc'ts.

Leak, Frank, & T. J. Tucker	81	80
Daniel Russel	30	00
Milam, Jo-n	115	00
Hebler, Dallas	3	20
Barrengin, Stuart	43	10
Toby, Jack	30	20
Clem, French	90	00
Hebler, Charles	135	00
Jackson, C. P.	326	60
Harris, Amos	21	64
Archibald, Henry	95	15
Milam, M. R.	115	98
Polk, Julius	57	73
Shegay, Ed., & Mat. Anaut	27	00
Duncap, W. H.	1	90
Perry, Aleck	55	00
Christopher, P. H.	32	60
Wilbaurn, Moses	4	70
Sanders, A. H.	35	00
Bishop, Shaw	12	00
Allen, A. J. & W. A.	109	15
Black, Martin & J. A.	20	90
Powell, W. R.	62	27
Short, M.	1	65
Robinson, Timothy	125	00
Dugger, Edmond	131	00
Rowzee, A. L.	1	25
Newson, F. P. (estimated)	30	00
Butler, Frank	22	44
Balch, R. C.	9	91
Johnson, J. W.	77	87
Morris & Grayson	20	76
Waldnip, F. W.	33	35
Harris, B. C.	93	22
Copps, A. W.	4	85
27 Carlton, Hen.	2	00
Hunter, T. J.		75
Young, J. M.	7	00
Tart, Willie	229	64
Davis, Dan. & Wm.	72	57
Hill, C. F.	9	93
Wilbourn, Henry	39	70
Orr, Mrs. *Orr*	1	50
Needham, T. L.	20	75
Tucker, T. J.	278	94
Deaton, Dr.	13	05
Harvison, Ellen	5	45
Littlejohn, M. J.	59	53
Irwin, S.	44	82

Bill, Ned	2	75
Beauland, Dr. E. D.	43	82
Wilbourne, Tillman	64	18
Kellum, S. R.	88	10
Hamersly, Dr.	15	15
Jones, Dan.	3	15
Glaser, George	33	72
Avant, Silas	15	95
Avant, Smith	197	48
" Daniel	8	10
" Amos	50	00
" Gardner	157	64
" Clabourn	42	81
" Mat.	53	41
Cox, C. H.	16	15
Avant, Allen	25	37
Youngblood, W. T.	78	02
Hammonds, J. M.	8	33
Youngblood, J. O.	44	30
" T. J.	60	53
Johnson, B. J.	111	05
Polk, Ben.	32	66
28 Lawson, Dan.	41	74
Dooley, J. D.	3	70
A. B. Farrell	54	93
Keeting, Sam.	3	90
Helderfield, Henry	19	86
McClure, Jake	3	35
Dickerson, John	44	87
Pemy, B. R.	2	00
Ellis, C. E.	4	50
" Ben.	87	19
Dorby, E. W.	23	34
Gray, M. C.	1	40
Lester, J. B.	39	61
Spear, Wm.	182	72
Ray, Dave	18	20
Robertson, W. A.	9	26
Mallacte, Wm.	13	37
Slaughter, J. C., & Frank Clune	13	28
Kenchlor, Miss Ada	4	00
Bell, Th's T.	5	25
Rowsey, Wm.	70	99
Beard, Jno. B.	2	27
Budger, J. A.	11	00
Margraves, J. D.	48	67
Grayson, Mer'to P.	65	01
Monger, H. J.	4	50
Smith, Jas.	17	20
Ward, Mrs. M. J.	1	38
Kellum, James	77	32

	Kurl, Anthony	29 00
	Wallace, A. W.	6 46
	Tramel, E. J.	83 75
	Campbell, C. W.	9 55
	Gray, Ambrose	61 26
	Davis, Wm.	21 51
	Rosbury, C. C., & J. A. Jones	79 43
29	Hobbs, J. W. (estimated)	70 00
	Grayson, Zoon	32 32
	Panola county	60
	Gibson, Jas. N.	27 90
	Lomax, Jesse	3 00
	Wallace, C. C.	5 50
	Crocket, C. W.	19 25
	Welsh, T. D.	19 80
	Lott, Jno.	14 45
	Panter, Chas.	3 10
	Trammel, Mrs. M. E.	5 45
	Bamenger, Jacob	95 12
	Lester, Washington	31 75
	Floyd, D. F.	7 16
	Radd, T. M.	15 15
	Crozier, R. H.	1 45
	Patty, Wm.	2 50
	Bridger, Toney	14 12
	Fitz, Gerrald, & John R. Dickens	1 75
	Bruscoi, Ed.	89 21
	Joyner, Wm.	54 85
	Palton, Miss Pumetia	2 50
	Campbell, C. H.	8 63
	Marsh, R. A.	2 40
	Williams, Chas.	6 15
	Kellum, T. P.	8 80
	Campbell, Jno.	18 33
	Granger, Jno.	7 00
	Hewlett, John M.	8 00
	Richards, C. W.	16 60
	Sezemore, B. C.	12 36
	Trammell, D. W.	11 20
	Patty, Anthony	3 30
	Foster, Martin, & E. J. T.	4 29
	Hubbard, Mathew	64 68
30	Ben. Hardin	32 43
	Brown, Scipio	143 50
	Wright, Ben.	85
	Johnson, Jane A.	59 19
	Campbell, Ed.	65 27
	Laird, Dan.	29 27
	Tyson, M. & A. Edge	35 40
	Newsen, J. K.	35 43
	Ward, D. C.	29 48

	Kyle, B. C.	12 25
	Bennett, Jno.	3 00
	Marquis, G. W.	13 17
	Archibald, W. A.	9 93
	Barnell, J. V.	17 50
	Hubbard, Campbell	4 38
	Arnold, Tobe	3 90
	Page, A. J.	4 60
	James N. Dickerson	17 44
	Little, Turner	2 00
	Neel, G. W.	1 80
	Keeler, W. W.	8 78
	Williamson, Lee, & Ben. Hardin	20 85
	Cleveland, Chas., & R. M. Hardin	18 45
	Horton, J. R.	3 50
	Milam, Jno., & S. Irwin	25 15
	Clements, J. H.	32 42
	Gates, Calif, & M. P. Short	7 00
	Self, W. J	7 21
	Pastor, A. B.	13 70
	Coleman, Jack	23 92
	Hatcher, W. W.	8 39
	Katon, Ed., & Dr. E. D. Beauland	21 50
	Dye, Tobe	4 00
	Wright, Adams	3 50
	Wilson, Tom	20 60
31	Lagrom, Mrs.	15 79
	Johnson, Lizzie, & E. J. Trummon	10 00
	Nelson, Henry & M. C. H.	17 00
	Budger, Miss Mary	4 50
	Jackson, Josh.	16 00
	Smith, Jim, & Jim Brulton	64 25
	Dorn, Miss Lillie	2 05
	Hobbs, W. P.	3 75
	Crumby, W. R.	3 25
	Blaun & Smith	5 74
	Emerson, Wm. M.	7 35
	Skillinger, ——	6 65
	Dodson, W. T.	44 85
	Rolenbery, R. T.	16 05
	Walbaum, Buck	75
	Rush, A. L.	11 30
	Irby, Freeman	3 25
	Spain, Joe	19 92
	Josh. Foster & David Ray	97
	Putts, A. F.	1 75
	Dunlap, D. C.	1 10
	Green, Tim.	2 25
	Thurlkill, Bob, & J. T. Maddox	5 03
	Wilburn, Sam.	4 35
	Wilsin, Bob	13 87

	Short, R. M.	2 50
	Tart, Willie	124 44
	Spain, Jno. D.	1 00
	Butler, Bob	2 66
	Hamis, Abe	15 33
	Dickerson, Mrs. S. C., & Chas. Powers	64 50
	Henderson, E. W.	3 50
	Blaun, S. R.	39 04
	Dickerson, W. C.	135 61
	Mathews, D. T. J.	46 84
	Jones, J. A.	284 09
32	Mabry, W. O.	246 02
	Hill, J. D.	146 00
	Hudspeth, D. G., & Mrs. E. E. Baker	43 49
	Cameron, J. D.	54 83
	Turner, Jack	43 78
	McCracken, W. T.	718 44
	Johnson, George	101 74
	Harris, Albert	87 91
	Farley, Sam	45 82
	Balch, J. C.	101 46
	Dr. Stephens, Jones	541 38
	Adam Brown	23 53
	Delaney, James	71 03
	Burns, A. W. & Co.	63 91
	Jenkins, R. P.	6 43
	Lee, Edmonds	365 01
	Rainwater, J. A.	251 60
	Town of Sardis	4 25
	Seutes, J. T.	138 56
	Appleton, W. F.	31 81
	Rainwater, L. F.	58 49
	Jackson, Butler, & W. T. Carlton	6 50
	Bust, Willis	55 73
	R. M. Montgomery	8 38
	J. F. Salter	60
	Harrison, Mrs. Fannie	109 39
	Hudspeth, D. G.	18 37
	J. B. Andrews	33 33
	Rudd, W. S.	15 64
	Bonner, F. M. B.	3 80
	Taylor, R. H.	2 85
	J. J. Scull	10 24
	Morehead, W. T.	21 70
	Britton, James	55 55
	McKee, R. B.	2 47
	Maddox, J. T.	2 20
33	Dow, H. J. D.	5 80
	Burkhalter, W. T.	1 30
	Howe, W. W.	16 25
	Sardis Mill Co.	14 06

Gray McEwen	6 00
Short, M. T.	23 40
Dugger, Wm.	727 94
Bonner, R. A.	132 22
Jackson, Robert	59 74
S. S. Smith	13 30
Partee, W. L.	190 17
Hightower, J. O.	16 63
Minor, A. F.	3 60
Campbell, W. W.	15 50
Gloortney, W. H.	2 40
Simms, Jas. M.	17 05
Greenewald, Jake	1 45
Hanson & West	10 67
Furter, C. H.	75
Rose, W. H.	3 10
Nance, Henry	31 55
Simmons, Mrs. E. D.	41 58
Boxley, J. M.	3 32
Morris, E. C.	353 71
Anderson, Dane	156 63
Mrs. F. E. Johnson & Tratters	614 67
Miller, Tom.	94 44
Johnson, Mrs. F. E., & W. B. Tratter	54 09
Franklin, Preston	84 38
Tratter, W. B., & F. E. Johnson	93 76
Miller, Sandy	38 90
Miller, Anderson	64 32
McMurray, F. H.	1,128 67
Burton, Cal.	46 67
Whet, B. N.	87 06
Hughes, Sandy	46 32
Jones, Hence, & J. Law	77 74
	$15,388 02

34 SCHEDULE E—Class No. One.

B. Lowenstein & Bros.	512 95
Hill, Standish & Co.	659 10
R. A. Patterson & Co.	273 35
Estes, Doan & Co., to amount of	10,000 00
W. H. Wall	291 67
Bank of Sardis, secured by deed of trust to sureties	1,000 00

SCHEDULE E—Class No. 2.

Edwin Bate & Co.	446 13
J. Franks & Co.	304 50
Graham, Cousins & Co.	13 25
Hill & Mitchell	3,051 35
Hornthall, Whitehead, Wiseman & Co.	673 83
Weller, Langstaff & Co.	15 12

Morris, Woodruff & Co.	291	08
Oliver, Finney & Co.	19	83
P. Pfifer & Co.	251	80
Rice, Stix & Co.	350	61
J. M. Robinson & Co.	178	44
Robinson Bros. & Co.	228	71
Seligman, Massauer & Co.	644	27
Stix, Krouse & Co.	252	35
Toof, S. C., & Co.	7	50
Ullathorn & Co.	27	75
Watt & Williams	38	90
Wells & Moffat	21	00
Whitfield, Powers & Co.	393	86
Willis & Wildberger	41	15
Ames, Beattie & Co.	67	50
Wilberson, W. N.	20	75
G. W. Hilme	36	53
Freedman Bros.	24	10
James, Lemmon & Gale	3,568	10
Brown & Jones	54	00
Brice & Lucas	15	04
35 Bickham & Moore	2,598	13
J. F. Frank & Co.	5,960	38
Richardson, Dunning & Co.	56	65
Estes, Doane & Co., to the amount of	2,085	00
Weeks & Gilder	368	28

[Endorsed:] S. H. Gunter to S. G. Spain, assignee. Deed of assignment.

THE STATE OF MISSISSIPPI, *Panola County:*

Chancery Court.

I certify that this deed & schedule were filed for record at 11.50 o'clock p. m. 25th day of March, 1882, and was duly recorded the 27th day of March, 1882, on page- 215–229, Book A 4, of the records of deeds of trust in my office.

(Signed) S. R. BLAIN, *Clerk.*

$8.00.

The foregoing copy of the deed of assignment is indorsed as follows: "Exhibit A in Estes, Doane & Co. *vs.* S. G. Spain *et al.*" Filed April 17th, 1882. G. R. Hill, clerk.

And on said 17 April, 1882, the judge endorsed the following order on said bill, to wit:

36 First. In the foregoing stated cause it appearing to me that notice of the application for the injunction in this cause has been waived, it is therefore ordered that upon complainants' entering into bond in the sum of one thousand dollars, payable to defendants, conditioned for the payment of such costs and damages

as may be awarded against complainants for the wrongful suing out of the injunction prayed for, *it is ordered* that the clerk issue the injunction prayed for.

Ordered this April 17th, 1882.

R. A. HILL, *Judge.*

Decree Appointing Receiver.

And afterwards, to wit, on the 17th day of April, 1882, the following further order was made in said cause, to wit:

ESTES DOANE & Co. *et al.*
vs.
S. G. SPAIN *et al* } 283.

Be it remembered that this day came on this cause for hearing upon application of the plaintiff in the above-stated cause for the appointment of a receiver; and it appearing to the satisfaction of the court that the interest of all parties concerned would be subserved by the appointment of a receiver, it is therefore ordered, adjudged, and decreed that J. F. Habgood be, and he is hereby, appointed receiver of the estate of S. H. Gunter, real and per-
37 sonal, of every kind and description, conveyed by the said S. H. Gunter by decree of assignment to S. G. Spain. It is further ordered that the said J. F. Habgood be, and he is hereby, ordered and directed to take charge of the stock of goods now in the store-house at Sardis, Panala county, Mississippi, and that he, in accordance with the provisions of said deed of assignment, proceed to sell and dispose of the same as soon as possible at public or private sale, as [he] may deem most beneficial to the interest of the creditors of the said S. H. Gunter. He, the said J. F. Habgood, shall also take charge of the debts due, notes, accounts, claims, and demands due the said S. H. Gunter, and proceed to collect the same in accordance with the provisions of said deed of assignment.

It is further ordered that the said J. F. Habgood, before he assumes the trusts hereby created, shall execute bond, conditioned and payable according to law, in the sum of five thousand dollars for the faithful performance of his duties as assignee as aforesaid.

It is further ordered that the said J. F. Habgood shall make monthly reports and pay over to the clerk of this court the sum or sums of money he shall have collected or realized from the sale of said goods during each month, and the said sums of money so realized to be held by said clerk subject to the further order of this court.

It is further ordered that the United States marshal for this district be, and he is hereby, directed to turn over and deliver
38 to said J. F. Habgood all the property levied on by him by virtue of the writs of attachment mentioned in complainants' bill, and that this decree is made without prejudice to any lien that may have been obtained by virtue of the levy of said attachments upon said property.

Ordered, adjudged, and decreed this 17th day of April, 1882.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 20th April, 1882, an injunction bond was approved & filed in said cause in the words and figures following, to wit:

Injunction Bond.

Know all men by these presents that we, Z. N. Estes and James H. H. Doane, partners in trade doing business under the firm name and style of Estes, Doane & Co., as principal, and Sledge Brothers as sureties, are held and firmly bound unto Bickham & Moore, J. F. Frank, surviving partner, &c; Lemmon & Gale, surviving partners, &c., and Hill and Mitchell, in the penal sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed by us this 19th day of April, 1882.

The conditions of the above obligation is such that whereas the above-bounden Estes, Doane & Co. have prayed an injunction restraining the said Bickham & Moore, J. F. Frank, surviving partners, &c.; Lemmon & Gale, surviving partners, &c., and
39 Hill & Mitchell from proceeding to enforce certain attachments sued out in the district court of the United States for the northern district of Mississippi:

Now, therefore, if the said Estes, Doane & Co. shall well and truly pay to the said plaintiffs in said attachment suits all damages and costs which may be awarded against the said Estes, Doane & Co. by reason of the wrongful suing out of said injunction in case the same shall be dis-olved, then this obligation to be void; otherwise to remain in full force and effect.

ESTES, DOANE & CO.,
By J. C. KYLE, *Att'y.*
SLEDGE BROS,
By J. C. KYLE,
Att'y-in-Fact.

Filed & approved April 20th, 1882.

G. R. HILL, *Clerk.*

And thereupon the following injunction writ was sued out in said cause, to wit:

Writ of Injunction.

The President of the United States to Bickham and Moore, J. F. Franks, surviving partner, &c.; Hill & Mitchell, and Lemmon and Gale, surviving partner, &c., and to all their agents, attorneys, and all persons for them concerned, and to the marshal of the northern district of Mississippi, Greeting:

In our district court of the United States for the northern district of Mississippi, at Oxford, Z. N. Estes & J. H. Doane, partners in trade doing business under the firm name & style of Estes, Doane & Co., & citizens of the State of Tennessee, have filed their bill for
40 relief and for an injunction restraining the said Bickham & Moore, J. F. Franks, surviving partner, &c.; Hill & Mitchell,

Lemmon & Gale, surviving partners, &c., & all persons from further prosecuting certain attachment suits by them commenced in this court against S. H. Gunter, returnable to the June term of this court, A. D. 1882, and have obtained the same returnable before the said court, sitting as a court of equity, at Oxford, on the 5th day of June, 1882:

Therefore we command and strictly enjoin upon you, the said Bickham & Moore, J. F. Franks, sur. part., &c., Hill & Mitchell, & Lemmon & Gale, sur. part., &c., your agents and attorneys, and all persons for you concerned, to desist from any and all further proceedings upon the aforesaid attachment suits until the order or decree of our said district court be made to the contrary.

This obey at your peril. And we command you, the said marshal, to deliver to said claimants a copy of this writ, and have the same before our said court at the time and place aforesaid.

Witness the Hon. R. A. Hill, judge of said court, and the seal thereof, at Oxford, the 20 day of April, A. D. 1882.

[L. S.] G. R. HILL, *Clerk.*

And upon the foregoing writ the marshal endorsed his return in the words & figures following, to wit:

Return.

Executed on the 20th April, 1882, by giving a true copy to
41 H. M. Sullivan, of the law firm of Sullivan & Sullivan; also a copy to H. P. Branham, of the law firm [of] Lamar, Mayes & Branham, att'y- for plaintiffs.

J. L. MORPHIS,
U. S. Marshal.
P'r J. T. SAUTER,
Dep. Marshal.

Marshal's fees:

2 services, $2.00	$4 00
4 copies, 50c. each	1 00
E'cut & return	50
	$5 50

And on the 6th day of May, 1882, the following supplemental decree was made in said cause, to wit:

Decree Appointing Lavender Receiver, Instead of Hobgood, Resigned.

ESTES, DOAN & CO. *et al.*
vs.
S. G. SPAIN *et al.* } 283.

It appearing to the satisfaction of the court that J. F. Hobgood, the receiver of the estate of S. H. Gunter, heretofore appointed in the case, has declined to serve, by agreement of all parties interested, it is hereby ordered, adjudged, and decreed that J. F. Laven-

der be, & he is hereby, appointed receiver of said estate in the place of said Hobgood, and all the powers and duties as such receiver heretofore conferred and imposed upon said Hobgood are hereby conferred & imposed upon said Lavender.

Ordered, adjudged, & decreed this 6 day of May, 1882.

R. A. HILL, *Judge, &c.*

And thereupon said receiver, on the 12 May, 1882, filed his bond as such in the words & figures following, to wit:

42 *Bond of Rece-ver Lavender.*

Know all men by these presents that we, J. F. Lavender, principal, and J. B. Boothe, B. C. Kyle, A. F. Minor, J. W. Clarke, & J. R. Buchanan are held and firmly bound unto the President of the United States of America in the penal sum of five thousand dollars, for which payment, well & truly to be made, we bind ourselves, our heirs and legal representatives, jointly and severally, firmly by these presents.

Signed and sealed by us this 11th day of May, 1882.

The condition of the above obligation is such that whereas the above-bound J. F. Lavender, by the district court of the United States for the southern district of Mississippi, has been appointed receiver in a certain proceeding therein pending, wherein Estes, Doan & Co. are plaintiffs and certain creditors of S. H. Gunter therein named are defendants, and authorized to take charged of the stock of goods, wares, & merchandise of the said S. H. Gunter and books of account, notes, accounts, judgments, &c., due the said S. H. Gunter, and to sell and dispose of said goods at public or private sale, as may be most advantageous to the creditors of said S. H. Gunter, & to collect said notes, accounts, judgments, &c., and report and deposit all monies so received by him as such receiver with G. R. Hill, clerk of said court: Now, if the said J. F. Lavender shall well and faithfully perform all the duties required of him by said court, and make monthly reports and deposit of all monies received by him, then this obligation to be void; otherwise, to remain in full force & virtue.

43

J. F. LAVENDER. [SEAL.]
J. B. BOOTHE. [SEAL.]
B. G. KYLE. [SEAL.]
A. F. MINOR. [SEAL.]
J. W. CLARKE. [SEAL.]
J. R. BUCHANAN. [SEAL.]

The above is a good and sufficient bond.

TAYLOR & KYLE.
HALL & BOOTHE.

Filed May 12, 1882.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 5th day of September, A. D. 1883, an answer of defendants was filed in said cause in the words & figures following, to wit:

Answer.

In the United States District Court for the Eastern Division of the Northern District of Mississippi.

The joint and separate answer of Bickham & Moore, composing the firm of Bickham & Moore, citizens of the State of Louisiana; J. F. Frank, surviving partner of the firm of J. F. Frank & Co.; H. T. Lemmon and Thomas Gale, surviving partners of the firm of Janier, Lemmon & Gale; I. M. Hill & —— Mitchell, composing the firm of Hill & Mitchell, citizens of the State of Tennessee, respondents to the bill filed in said court April 17th, 1882, by Estes, Doan & Co. *versus* S. G. Spain, assignee, *et als.*, numbered upon the equity docket 283.

To the Honorable R. A. Hill, judge of the district court of the United States for the eastern division of the northern district of Mississippi, sitting in equity at Oxford for said eastern division of said district:

Respondents, reserving the benefit of all exceptions to said bill for the many errors and insufficiencies in said bill, for answer thereto, or so much thereof as they are advised is necessary & mate-
44 rial for them to answer, say:

Respondents admit the residence and business as alledged of the complainants and of S. H. Gunter. Respondents deny that complainants within the past few years have sold to the said S. H. Gunter mostly on credit large quantities of goods, wares, & merchandise & supplies, and have advanced to him large sums of money aggregating ma-y thousands of dollars, and respondents, on information and belief, deny that on the 25th March, 1882, said S. H. Gunter was justly indebted to said complainants in the sum of about ($12,000) twelve thousand dollars as alleged, and that the same is still due and unpaid, and respondents demand strict proof as to these points. Respondents admit that said Gunter was largely indebted & is so still to divers other persons who are defendants to the bill for goods, wares, merchandise, and for balance due upon commercial transactions; but respondents, upon information and belief, deny that he became so indebted at a period prior to the date when he began dealing with complainant-.

Respondents admit the insolvency of said S. H. Gunter and the execution by him of a deed of assignment purporting, as alleged in the bill, to convey to S. G. Spain, as assignee, all the property (except exemptions) owned by said S. H. Gunter at the time and for the purpose & with the stipulations & conditions and provisions as set forth in the bill; that the said deed of assignment is recorded as alleged, & that it purports to convey the property as alleged & de-
45 scribed in complainants' bill. Admit that by the terms of said assignment certain creditors of said Gunter were preferred in

the order of their payment to others, and that the alleged creditors so preferred are as stated in said bill & for the amounts as stated, including an alleged preferred debt of $10,000 to complainants.

Respondents, on information & belief, emphatically deny that said deed of assignment was executed by said S. H. Gunter in good faith & for the benefit of his creditors, & deny that none of the acts of said Gunter in connection therewith were colorable or covinous, & deny that there was no intention on his part to hinder, defeat, or delay his creditors or any of them, and, on information and belief, deny that said assignment is valid or legal.

Respondents admit that said assignee, S. G. Spain, accepted the trust as assignee conferred upon him by said deed of assignment and took possession of the property as alleged, and admit that these respondents sued out writs of attachment in the courts for the amounts & at the dates, and had the same levied as charged in the bill, respectively, and that the United States marshal took the property so levied upon into his possession & out of the possession of said S. G. Spain; but respondents deny that (upon information & belief) the marshal refused or now refuses to deliver possession thereof unto said Spain except upon the conditions alleged in the bill; but respondents, upon information and belief, states the fact to be that said marshal complied & still offers to comply with the statute of said State of Mississippi in such case made & provided, and to deliver possession unto said assignee upon the execution of such bond, as the law requires.

46 As the value of the property, notes, and accounts attached respondents are not advised & can neither admit nor deny, but demands proof if deemed material in this behalf.

Respondents emphatically deny that the sole & only question involved in their said attachment suits is whether or not said assignment is valid or fraudulent, and they deny that each of said attachment suits is based solely upon the fact that said S. H. Gunter made & executed the assignment as aforesaid to said Spain, but respondents admit that that is one of the grounds of each of said attachments, that said deed of assignment is fraudulent & in violation of the attachment laws of the State of Mississippi. As to the multiplicity of suits growing out of said attachments and the hardships occasioned thereby to complainants complained of respondents submit that complainant has a complete, full, & adequate remedy at law, and respondents asks that this answer be taken as a demurrer as to this point. Respondents admit that there are a large number of unpreferred creditors who are liable to think, as do respondents, that there are sufficient grounds of attachment & fraud & to attach said property. But if they should, respondents submit that this court would have no jurisdiction to enjoin them from attaching.

Respondents admit that said Spain is unable to give the necessary bonds to car-y out his trust as assignee and to take possession of the property, and that he abandoned his trust as such assignee.

Respondent-, upon information and belief, den*ies* that the said

marshal proposed to sell, after 10 days' advertisement, all of
47 said property, including notes & accounts, in the manner alleged, or to dispose of them or any part thereof in any manner except that pointed out by law.

Respondents admit that a receiver, under proper orders of this court, could sell & dispose of said property & make collections of said claims upon better terms & with less costs than through the means prescribed by law for the marshal.

And respondents, having now fully answered, prays to be dismissed hence with their reasonable costs.

LAMAR, MAYES & BRANHAM.
SULLIVAN & SULLIVAN.

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Before me, Algeman S. Beck, a commissioner for the State of Mississippi, resident at New Orleans, La., in & for said State of Louisiana, on this twenty-first of August, 1882, personally appeared Mr. John V. Moore, member of the commercial firm of Bickham & Moore, of this city, who, having been by me duly sworn according to law, deposes & says: "All the statements made in the within answer and petition on the reverse hereof and preceding are true and correct."

JNO. V. MOORE.

Sworn to and subscribed before me this twenty-first of August, 1882, at New Orleans, Louisiana.

[L. S.] A. S. BECK,
Commissioner for Mississippi at New Orleans, La.

Filed Sept. 5th, 1882.

G. R. HILL, *Clerk.*

And on the 18 Nov., 1882, thereafter the following replication was filed to the foregoing answer, to wit:

48 *Replication.*

Circuit Court of U. S. for Northern District of Mississippi.

ESTES, DOAN & Co. *vs.* J. G. SPAIN, Assignee, *et al.*

The replication of Z. N. Estes and —— Doan, composing firm of Estes, Doan & Co., complainants, to the answer of Bickham & Moore and others.

This repliant-, saving and reserving all manner of exception to the manifold insufficiencies of said answer, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient, and that said answer of said defendants is uncertain, untrue, and insufficient to be replied to by these repliants, without this, that any other matter or thing whatsoever in said answer contained material or effectual to be replied to, confessed or avoided,

traveresed or denied, is true; all which respondents are ready to aver and prove as this hon. court shall direct, &c.

HALL & BOOTHE,
TAYLER & KYLE,
WRIGHT, FOLKES & WRIGHT,
Sol's for Compl'ts.

Filed Nov. 18, 1882.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 1st January, 1883, the deposition of Z. N. Estes & others, for complainants, was filed, which is in the words & figures following:

Deposition of Estes & Others.

In the District Court of the United States for the Western Division of the Northern District of Mississippi. In Equity.

ESTES, DOAN & Co. *vs.* S. G. SPAIN, Assignee, *et al.*

49 The deposition of Z. N. Estes, J. H. Doan, S. S. Spicer, J. M. Maury, taken in this cause on the 29th day of December, 1882, at the office of Wright, Folkes & Wright, in the city of Memphis, Tenn., in the presence of L. E. Wright, of counsel for complainants, and H. P. Branham, of counsel for defendants, said deposition when taken to be read in evidence on behalf of the complainants, subject only to exceptions for competency and relevancy, all formal matters being waived. The depositions were to have been begun on the 28th instant, but by consent of counsel the taking of the same was deferred until to-day.

WRIGHT, FOLKES & WRIGHT,
For Pl'ffs.
LAMAR, MAYES & BRANHAM,
For Def'ts.

The first witness, Z. N. ESTES, of lawful age, being duly sworn, deposes and says as follows:

By L. E. WRIGHT:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Z. N. Estes; I am 50 years of age; I reside in Memphis, Tenn.; occupation, merchant.

2. What is the style of your firm, if you are a member of any firm, and what is their particular line of business, and who composes the firm?

Ans. The style of the firm is Estes, Doan & Co., composed of Z. N. Estes and J. H. Doan; the business is wholesale grocers and cotton and commission merchants; we are doing business in Memphis, Tenn., and have been for many years.

3. Do you know S. H. Gunter? And, if so, state where he lives and what is or has been his business, and whether your firm
50 has had any business transactions with him.

Ans. I do know him; he resides at Sardis, Miss.; has been a merchant there until his failure last March; we have had business transactions with him.

4. What are the natures of those transactions? State fully and in your own way, and whether as a result of those transactions he owes your firm any money, and how much.

Ans. The nature of the transactions were mainly for cash, and partly for goods sold him; as a result of it he owes us a balance of $13,587.68.

5. Have you an itemized account of the dealings of your firm with S. H. Gunter? And, if so, state whether or not the same is correct, and is still due and owing by said Gunter to your firm; also if you have such an itemized account please file it as an exhibit to this your deposition.

Ans. We have an itemized account of these transactions, which is correct. I file the account as Exhibit "A" to this deposition; no part of the balance of $13,587.68 has been paid, and the same is due to us by S. H. Gunter.

6. Is your firm the Estes, Doan & Co. who are complainants to this suit, and are you the same Estes, Doan & Co. mentioned in the assignment of March 25th, 1882, as preferred creditors of S. H. Gunter?

Ans. Yes, sir.

7. State when your firm was first informed of the fact that they were preferred in the assignment, and state also when you were first informed that said assignment had been made, and in a
51 general way give a history of your preference in said assignment so far as you are informed.

Ans. It must have been the next day or the day after. It was rumored the next day or the day after—the day after the assignment—that they had made an assignment. When we heard it we telegraphed to Taylor & Kyle, attorneys, at Sardis, Miss., inquiring about it, and they replied that the assignment had been made, and that we had been preferred therein for $10,000.00. This was the first information that we had that the assignment had been made or that we had be[en] preferred.

8. Did you have any understanding or agreement with said Gunter prior to the said assignment that he intended making an assignment, or that your firm were to be preferred therein?

Ans. I had none at all; I had no intimation that there was to be an assignment, and was surprised when I heard it. There was no understanding between us that we were to be preferred. He had told us all the time that he would be able to pull through and pay his debts.

9. Do you know why your firm was preferred in said assignment over other creditors?

Ans. No reason, except that the account was of short duration and mainly for cash, and little profit in it. Had no time to make much profit out of it.

10. Over what period did your account extend?

Ans. He opened a small account with us in September, 1879, but was then doing his business mainly with Dillard & Coffin, merchants in the city. On June 1, 1880, we settled the balance due by him to Dillard & Coffin, amounting to $3,413.94, by
52 our acceptance of his draft in their favor due November 1–4, 1880. He then began doing all his business with us. His account with us was *kiped* pretty well balanced up to June, 1880, and his business was all done with us from that date until just before his assignment. There were some matters for which we had become responsible to New York parties which matured after his assignment, and which we were obliged to pay and did pay according to the dates, as shown in the account.

11. What is the history of the item on your account April 22, 188[illegible], acceptance due November 15, 1881, $3,500; also sight draft same date to G. W. Deaton for $198.74?

Ans. Those two items paid for a stock of goods bought by S. H. Gunter from G. W. Deaton, assignee of Cary and Richardson, of Courtland, Miss., at less than fifty cents on the dollar on the original cost. He thought it a very desirable trade, and we helped him to make it, giving our acceptance, on which he raised the money, and the draft for $198.74 was for that much which he found himself short in making this purchase. These two items were in excess of the amount which we had agreed to let him have that summer, and consequently increased his account that much.

12. Were these advances of $3,500 and $198.74 in your ordinary line of business and dealings with him as merchants or outside of same? Answer fully.

Ans. They were entirely outside of our agreement with
53 him for the amounts which we were to furnish him that summer. He was very anxious to make the trade, and wanted us to help him, which we were disposed to do and did do.

13. What became of the stock of goods purchased by Gunter from G. W. Deaton, assignee of Cary & Richardson?

Ans. They went into his general stock at Sardis, and we understood that many of the goods were on hand at the time of the assignment and went into it.

14. Can you state how it happened that Gunter carried over from the season of 1881 to 1882 so much of his stock of goods?

Ans. There had been a very short crop of the year 1881, and the dry-goods trade of that year amounted to almost nothing.

Cross-examination by H. P. BRANHAM for the defendants:

X 1. Do you know what S. H. Gunter is doing now?

Ans. No, sir; I do not.

X 2. Do you know whether or not his wife is engaged in any business at Sardis, Miss., or elsewhere?

Ans. I have understood that she was engaged in business at Sardis, Miss., but know nothing about it of my own knowledge.

X 3. Did your firm, or any member of it, ever advance to S. H. Gunter for himself or for his wife, or for the use of any one else, any money since the 25th day of March, 1882?

Ans. No, sir; nothing at all, except what is referred to in
54 my examination-in-chief as liabilities, which were contracted before but matured after the assignment to New York parties.

X 4. Do you keep the books of your firm?

Ans. No, sir; I do not; but I look over them every day and see what is on them.

X 5. Do you know of your personal knowledge that every item on the account filed as an exhibit to this deposition is correct?

Ans. Yes, sir; I do.

X 6. State how you acquired that knowledge.

Ans. By attending personally to the selling of the goods and paying of the money. I looked after the business personally and watched about — went in and everything that went out; besides, the account has been frequently rendered to Mr. Gunter and every item on it acknowledged by him.

X 7. When was the last time you rendered him such an account?

Ans. Soon after his assignment and as soon as we could get up his cotton. I cannot remember the date without reference to the books. I know that the books are correctly kept, because I look over them daily and see that the entries are correct.

X 8. Then, it is knowledge derived from the books upon which you base your testimony as to the correctness of the account?

Ans. Seeing that the entries are correctly made on the books, where they remain forever, while the transactions are fresh in my memory. My knowledge of the transactions is based upon the transactions themselves, which are entered on the books.

55 X 9. In stating that the various items in the account are correct, do you state it from memory or from information derived by an inspection of the books of your firm?

Ans. In looking over the books I recall ma-y of the transactions; then I recollect many of them independently of the books. A man can't carry everything in his head, and is obliged to rely upon the record of the books; but I know that the entries in the books are correct.

X 10. Did you sell in person to S. H. Gunter all of the merchandise charged on that account, or was any or all of it sold to him by your partner or by any one else in your employment?

Ans. No; I did not sell all to him. Mr. Murray and others in the store sold also, and many were sold on Mr. Gunter's orders when he was not in Memphis.

X 11. Where goods are sold on orders in your house, who fills such orders and ships the goods?

Ans. I direct it done. I have a shipping clerk and a bill clerk in front to do the work under my directions.

X 12. Did you personally superintend the filling of every order received from S. H. Gunter by your firm from September 15th, 1879, to March 25, 1882?

Ans. I don't remember. I may not have been at home when a part of it was done, tho' I looked over all of them. I may have superintended the filling of the orders; don't remember.

X 13. Have you at any time been absent from the city of Memphis between September 15, 1879, and March 25, 1882? If yes, state when it was and how long you were gone.

56 Ans. On Sept. 15, 1879, I was in St. Louis, and the goods were sold to him from St. Louis, where we were then doing business on ac. of the prevalence of yellow fever in Memphis at that time. The first business done by Gunter with us was in St. Louis. I may have made one or two visits to New York in that time of two weeks each.

X 14. When goods are sold on credit by a salesman of your firm how are they charged?

Ans. Regularly on the blotter, the same as by any one else. The charges are made by the salesman, of whom we have but one, and he keeps the blotter.

X 15. Are these charges transferred afterwards on a ledger? And, if so, state who makes the transfers.

Ans. They are transferred to a journal; from there posted to a ledger, which work is done by our book-keeper in the office, Mr. S. S. Spicer.

X 16. Who made out this account on file?

Ans. S. S. Spicer, our book-keeper.

X 17. In June, 1880, when you settled up the account of S. H. Gunter with Dillard & Coffin, and made arrangements with Gunter to do his business, state what was said by or to Gunter in reference to any security you were to have for money advanced or goods sold.

Ans. There was nothing at all said. We did not ask him for any security, and did not require it. We then considered him good, and relied upon his good faith.

X 18. Did you or any member of your firm, after June, 1880, ask Gunter to give you any security of any kind for all or any part of the debt owing to you by him?

57 Ans. No, sir; we did not. We never did ask him for a dollar of security at any time of the existence of the account.

X 19. What was the amount paid in New York after the assignment, and what was the nature of the transactions on which the money was paid, if you know?

Ans. $279.78 to Thomas Fenner & Co., merchants, in New York. It was a balance on a transaction with them in cotton futures, a loss which he owed them, and which we had guaranteed some time prior to his failure, in January or February.

X 20. How did you happen to guarantee this account, and was it before or after the loss?

Ans. It was before the loss. The transaction was through us. Gunter ordered the transaction through us, and we advanced the margins for him, and guaranteed it. As soon as the result was ascertained we paid it.

X 21. State whether or not from September 15th, 1879, to March 25th, 1882, your firm ever purchased for S. H. Gunter any other futures in cotton or other articles, or advanced any money for the purchase of futures for Gunter, or paid any losses or loss sustained by Gunter in such future transaction, or assisted him in any way in

speculations in futures. If yes, state fully and specifically when and where such transactions took place, the amount of money advanced for the purchase of futures by your firm, or paid out on losses sustained in such transactions, and point out in the account on file all of the items in which all or any part of the money
58 charged was advanced for such purpose or paid out for such losses, stating whether they were advancements for the purchase of futures or payments for losses sustained.

Ans. There were never but two transactions in futures by S. H. Gunter through us, and one of these was already spoken of as having been paid by us after the assignment. They appear in the account as items of February 28, 1882, $285.06, and April 29, 1882, $279.78; they were bought through us and we were already liable for them, having guaranteed the transactions to Fenner & Co. before the losses and at the time of the purchase; the transactions were each for one hundred bales.

X 22. How much margin did you put up or guarantee for each transaction, both at the time of purchase or subsequently, before the sale?

Ans. $450 to $500 in each case.

X 23. Do you know of S. H. Gunter's having speculated in cotton futures through any one else in Memphis or elsewhere?

Ans. I do not.

X 24. How much cotton belonging to S. H. Gunter did your firm have on hand on the 25 day of February, 1882, and on the 25 day of March, 1882?

Ans. On the 25 of February, 1882, we had on hand 132 bales, and on March 25th, 1882, we had on hand 23 bales.

X 25. State how you know that Gunter put the goods bought from the assignee of Cary & Richardson in his store at Sardis, and how do you know that he had the goods, or any part of them, so purchased on hand at the time of the assignment?

Ans. From the report made to me by Gunter and his book-
59 keeper, Mr. Spain, at the time of the purchase. It was the understanding at the time that the goods were to go into the stock at Sardis.

And further this deponent saith not.

Z. N. ESTES.

Subscribed & sworn to before me this December 29, 1882.

[L. S.] M. B. TREZEVANT,
Notary Public.

And the next witness, J. H. DOAN, of lawful age, being first duly sworn, deposes and says:

Int. 1. State your name, age, residence, and occupation.

Ans. My name is J. H. Doan; I am 52 years old; occupation, merchant; I reside in Memphis, Tenn.

2. If you are a member of any commercial firm, state what firm and who compose it, & whether or not this is the firm which are complainants to this case.

Ans. I am a member of the firm of Estes, Doan & Co., which is composed of Z. N. Estes and myself, and we are the complainants in the suit.

3. Have you heard the deposition of Z. N. Estes in this case read? And, if yea, state whether the statements therein are correct or otherwise, and refer to the same in your answer.

Ans. The deposition of Mr. Estes has just been read over to me. To my knowledge his statements in that deposition are correct; I am cognisant of the facts stated in his deposition; I mean that I know that the transactions between S. H. Gunter and our firm,
60 as stated by Mr. Estes in his deposition, are correctly stated by him.

Cross-examination:

X 1. Did Gunter ever promise you or your firm, at the time his business was transferred to your firm from Dillard & Coffin, that he would make his account secure to you?

Ans. No, sir; he never made any such promise then or any other time; he only promised to pay it; we never asked him for security.

X 2. Have you crittically examined the statement of account filed as an exhibit to Mr. Estes deposition?

Ans. I have.

And further this deponent saith not.

J. H. DOAN.

Subscribed & sworn to before me this December 29, 1882.

[L. S.] M. B. TREZEVANT,
Notary Public.

And the next witness, S. S. SPICER, of lawful age, being *next* duly sworn, deposes and says:

Int. 1. State your name, age, residence, and occupation; if you know the parties to this suit.

Ans. My name is Samuel S. Spicer; I reside in Memphis, Tenn.; I am 46 years old; I am a book-keeper by occupation; engaged since June, 1880, as book-keeper for Estes, Doan & Co., of Memphis, the complainants in this suit; I am acquainted with all the parties to this suit, personally or by reputation.

2. Have you had sole charge of the books of Estes, Doan & Co. since June, 1880?

Ans. I have.

61 [3.] Examine the account of S. H. Gunter, attached to the deposition of Z. N. Estes in this cause and marked Ex. A, and state in whose handwriting said account is, and whether or not the same is a correct transcript from the books of Estes, Doan & Co., kept by you as their book-keeper.

Ans. I have examined this account and it is in my handwriting, having been made out by me. It is a correct transcript of the account from the books of Estes, Doan & Co.

4. Did you as their book-keeper make entry of all or any part of the items making up this account upon the books of Estes, Doan & Co.; if not, who did? State also whether such entry of such items were made in the regular course of business of Estes, Doan & Co., and whether the same gives a correct history of such transactions.

Ans. I kept the books and made all the entries from June 1st, 1880, down to the end of the account. Prior to June 1, 1880, the entries were made by T. H. Gathard. These entries were made in the regular course of business, and the books were correctly kept, and correctly represent the state of S. H. Gunter's account with that firm.

Cross-examined:

X 1. What is the name of the salesman employed by Estes, Doan & Co. who kept the blotter of that firm?

Ans. J. M. Maury.

X 2. Do you ever act as salesman in the store?

Ans. No.

X 3. Then all that you know of your personal knowledge is that the items of goods sold to Gunter by Estes, Doan & Co. since
62 June, 1880, were correctly transferred by you from the blotter to the journal & from the journal to the ledger, is it not?

Ans. Yes, that is so, as to the goods sold him, but I know personally as to the cash paid and the drafts accepted and paid for Gunter, as set forth in the account. I know that these items are all correctly charged, because I paid out the money myself.

& further this deponent saith not.

S. S. SPICER.

Subscribed & sworn to before me this December 29, 1882.

[L. S.] M. B. TREZEVENT,
Notary Public.

And the next witness, J. M. MAURY, of lawful age, being first duly sworn, deposes and says:

Int. 1. State your name, age, residence, and occupation, and whether you are acquainted with the complainants and S. H. Gunter, of Sardis, Miss.

Ans. My name is James M. Maury; I am 39 years old; I live in Memphis; I am salesman and entry clerk for Estes, Doan & Co.; I am acquainted with them and with S. H. Gunter.

2. How long have you been so engaged, and what are your duties?

Ans. I have been so engaged since 1878. I sell goods, enter orders, & make out bills. It is my business to make the entries on the blotter.

3. Were the entries made on your blotter showing the sales of goods to S. H. Gunter correctly made?

Ans. Yes, sir; to the best of my belief and knowledge; I have never heard a complaint of their being incorrectly entered,
63 and have every reason to believe and am satisfied that they are correct.

4. In the course of your business what was done with the entries after they were made on the blotter; were they transferred into any other book; &, if so, by whom? Explain the process of keeping the books.

Ans. When the orders come in they are first on the blotter, with the name of the buyer, the date, the goods, the amount, and the price; the blotter is then carried back to the office and the amounts and names are then posted into the journal by the book-keeper.

5. State whether Estes, Doan & Co. are large merchants, whether they keep a full and regular set of books, and who is now the book-keeper and how long —.

Ans. They are doing a very large business, and keep a regular and full set of books: Mr. Sam'l S. Spicer is their book-keeper and has been since June, 1880; prior to that time, for about 20 months, T. H. Gathard was the book-keeper.

6. Who sold the goods and merchandise charged in said Gunter's account to him?

Ans. Mr. Estes and myself, and sometimes we received orders from Gunter which we fil-ed.

7. Were the goods as sold by you or by Mr. Estes, or by orders, as stated by you in your answer to the last interrogatory, correctly put down by you upon the blotter, both as to amount and price.

Ans. Yes, sir.

And further this deponent saith not.

J. M. MAURY.

Subscribed & sworn to before me this December 29, 1882.

[L. S.] J. M. TREZEVENT,
Notary Public.

64 *Objection.*

Counsel for defendants hereby object to the admission of depositions of Z. N. Estes, J. H. Doan, James M. Maury, and S. S. Spicer in evidence in this cause, because the counsel for complainants have failed to propound to either of said witnesses the interrogatory prescribed by the Supreme Court of the United States as the last interrogatory which shall be asked witness when testimony is taken upon writt . interrogatories to be used in a cause pending on the chancery docket of a United States court—that is, because rule 71 of the equity rules so prescribed has not been complied with.

It is understood by counsel on both sides that this objection is not included in the formal matters waived in their agreement to take the foregoing depositions.

The foregoing objection was not raised until the close of the depositions of Z. N. Estes & J. H. Doan.

[L. S.] M. B. TREZEVENT,
Notary Public.

The following is the account referred to in and marked Ex. A to the deposition of Z. N. Estes, to wit:

65

"EXHIBIT A."

Mr. S. H. Gunter in account with Estes, Doan & Co.

Debits:

1879.			
Sept.	15.	Merchandise	$1,056 24
	17.	"	97 49
	18.	"	5 40
Oct.	3.	D'ft, Hill & Mitchell	13 67
"	"	" Rice, Stix & Co.	17 95
Nov.	14.	Mdse.	60 48
"	18.	"	51 00
"	21.	"	332 50
"	24.	D'ft, H. H. Parnell	1,063 54
Dec.	18.	Mdse.	183 75
	30.	"	597 50
	31.	"	150 30
'80.			
Jan'y	5.	D'ft, Wall, cashier	500 00
		" Lamb, tr.	80 00
Jan'y	6.	D'ft, J. H. Rice	56 95
"	12.	" Naumburg, Krous, Lauer & Co.	149 11
"	3.	Mdse.	141 10
Apr.	22.	D'ft to J. F. Frank & Co.	400 00
	30.	Mdse.	627 85
May	19.	D'ft, McCorde, Brown & Co.	200 00
June	1.	Our acceptance, due 1-4 Nov.	3,413 94
	9.	Mdse.	619 98
	22.	D'ft, Miss J. Glenn	16 00
July	2.	" M. H. Horton & Co.	231 25
	10.	" M. H. Wall, cash'r	100 00
	13.	Mdse.	177 01
	20.	D'ft, M. H. Wall, cashier	125 30
"	"	" Ames, Beattie & Co.	100 53
	24.	" L. & G. Brownus & Co.	91 63
	27.	Mdse.	231 00
	28.	Do.	83 72
	29.	Do.	664 53
66			
July	30.	D'ft, J. A. Dennie	17 00
"		Murray & Ridley	22 00
"		Brown & Jones	66 00
"		Mdse.	446 55
Aug.	1.	D'ft, Smith, Stroughler & Boyur	193 00
	9.	" Smaltz, Monroe & Co.	220 00
	13.	Merchandise	112 40
	23.	Do	23 35
Sept.	1.	"	215 15
	6.	"	111 22
	16.	"	877 97
	25.	"	30 16
		Forwarded	14,034 48

1880.

Sept.	28.	Cash self	500 00
	11.	Mdse.	121 27
Oct.	6.	Cash d'ft, Wall, cash'r	500 00
	9.	" " Horton & Co	104 81
	12.	" " Hurzog	137 10
	14.	Mdse.	303 47
	25.	D'ft, Wall, cash'r	170 00
	25.	Mdse.	96 46
	28.	D'ft, Wall, cash'r	500 00
	29.	" Chapman	100 00
Nov.	5.	" Wall, cash'r	700 00
	10.	" W. Oliver, tr.	107 00
	11.	" Chapman	250 00
	12.	" W. H. Wall	110 00
	2.	Mdse.	158 91
	10.	Do.	125 31
	17.	"	373 48
	16.	D'ft to Wall	500 00
	18.	" G. W. Balentine	318 82
	19.	" Wall	600 00
	"	" O. Furrier & Co.	46 26
	"	" Altathorn & Co.	47 79
	23.	" W. H. Wall	500 00

67

Nov.	23.	D'ft, J. E. Carleton & Son	194 40
	25.	Acceptance, Hill & Mitchell, due Dec. 25–28	892 60
	23.	Mdse.	103 11
	25.	"	454 93
	23.	Cash, W. H. Wall, cash'r	1,000 00
	24.	" "	500 00
	27.	Mdse.	74 62
	26.	D'ft, W. H. Wall, cash	500 00
	"	" J. F. Frank & Co.	36 00
	27.	" W. H. Wall	500 00
	"	" Do.	500 00
	29.	" Do.	500 00
	30.	" Lemmon & Gale	317 48
Dec.	3.	" W. H. Wall, cash'r	1,000 00
	4.	" A. B. Jones	150 00
	"	" H. H. Parnell	619 79
	7.	" Stix, Krouse & Co.	88 00
	8	" W. H. Wall, cash'r	1,000 00
	10.	" Jno. Lilly	234 85
	10.	" Randle & Levermore	20 00
	"	" Rice & Yost	135 15
	"	" Macy & Co.	2 50
		Forwarded	29,228 59

1880.			
Dec.	11.	D'ft, Hill, F. & Co.	500 00
	13.	" W. H. Wall, cash'r	1,000 00
	15.	" Gus Rexenger	122 35
	11.	" W. H. Wall, cash'r	500 00
	18.	" " "	500 00
	7.	Mdse.	30 46
	10.	"	93 45
	11.	"	81 63
	16.	"	443 18
	27.	"	125 25
	22.	D'ft, Wall, cash'r	500 00
	22.	" " "	500 00
	24.	" Pratt b. c.	144 45
68			
Dec.	24.	D'ft, Langstaff & P.	41 32
	28.	" Rice, Stix & Co.	400 00
	30.	D'ft, B. Lowenstein & Bros.	158 30
'81.			
Jan'y	5.	" Wall, cash'r	300 00
	6.	" S. S. Smith	673 40
	10.	" Oliver, F. & Co.	156 16
	11.	" W. S. Jack	131 44
	13.	" Rice, Stix & Co.	118 33
	17.	" W. H. Wall, cash'r	500 00
	11.	Mdse.	218 25
	13.	"	6 50
	24.	D'ft, Willis & Wilderberg	41 90
	26.	" W. H. Wall, cash'r	500 00
	27.	" Menken Bros.	55 20
	28.	" W. H. Wall, cash'r	125 00
	11.	" " "	500 00
	29.	" " "	500 00
Feb'y	1.	" " "	500 00
	3.	" J. T. Maddox	400 00
	"	" W. H. Wall, cash'r	800 00
	4.	" J. T. Maddox	450 00
	5.	" W. H. Wall, cash'r	500 00
	8.	" Do.	500 00
	2.	Mdse.	924 83
	4.	Do.	157 05
	16.	"	62 00
	10.	Acceptance, E. Bates & Co., due M'ch 7	1,000 00
	17.	D'ft, Hembre Bros.	500 00
	24.	" W. H. Wall	500 00
	23.	Mdse.	403 27
M'ch	3.	Byron & Camp	25 00
		Dr. forwarded	$44,919 31

1881.				
M'ch	5.	D'ft,	W. H. Wall, cash.	600 00
	9.	"	Jno. Kukhein	14 00
	10.	"	C. W. Durall	121 14
	11.	"	E. C. Buchanan & Co.	125 47
69				
	14.	"	W. H. Wall, cash'r	300 00
	4.	Mdse.		173 33
	8.	Do.		799 63
	16.	"		500 16
	19.	"		461 54
	29.	"		288 22
	30.	D'ft,	W. W. Keith	90 00
Apr.	9.	"	Lemmon & Gale	400 00
	"	"	Rice, Stix & Co.	100 00
	22.	"	G. W. Dealton	198 74
			Acceptance due Nov. 15	3,500 00
	9.	Merchandise		802 98
	15.	Do.		367 28
	30.	"		237 53
May	4.	D'ft,	H. B. Jones	150 00.
	12.		Ozam & May	13 13
	7.	Mdse.		75 00
	11.	"		371 07
	23.	"		839 04
	24.	D'ft,	H. Weaver & Co.	150 00
Jun.	3.	Pd. carriage form		50
	6.	Mdse.		81 25
	10.	"		268 76
	14.	"		225 38
	16.	"		82 50
July	5.	"		231 40
	12.	"		757 82
	19.	"		17 58
	20.	"		266 29
	30.	"		573 25
Aug.	9.	"		118 83
	10.	"		215 53
	22.	"		26 72
	24.	"		108 84
	31.	"		124 93
Sep.	8.	"		462 12
70				
Sep'r	9.	Mdse.		125 33
	13.	"		32 95
	20.	"		222 24
	23.	D'ft, to W. H. Wall		500 00
				60,039 69

1881.			
Sep'r	29.	D'ft, W. H. Wall	500 00
"	"	Mdse.	126 35
Oct.	4.	D'ft, W. H. Wall	60 00
	6.	" Brown & Jones	66 00
	7.	" W. H. Wall	500 00
	13.	" W. H. Wall	500 00
	4.	Mdse.	1,069 64
	5.	Do.	46 11
	6.	"	111 49
	13.	"	105 71
	14.	Telegram	75
	15.	D'ft, W. H. Wall	500 00
	18.	Medse.	3 82
	20.	D'ft, Wall	500 00
	25.	" Graham, Cowens & Co.	13 00
	29.	To error in sales cotton, Jan'y 16th, 1881	10 63
	21.	Merchandise	14 25
	24.	Do.	100 05
	26.	"	95 79
	28.	D'ft, W. H. Wall	500 00
	31.	Mdse	123 62
Nov.	4.	D'ft, Wills & Mowfat	22 25
"	"	J. F. Frank & Co.	14 42
	5.	" to Wall	500 00
	10.	" " "	500 00
	15.	" " "	500 00
	16.	" " "	300 00
	12.	Merchandise	121 40
	14.	"	94 44
	15.	"	233 65
	19.	D'ft to Rice, Stix & Co.	350 00
71			
Nov.	19.	D'ft to W. H. Wall, cash'r	500 00
	26.	" " Do.	500 00
	29.	" " W. H. Wall	500 00
	"	Acceptance to Lowenstein, due Dec. 19	500 00
	25.	Merchandise	853 67
Dec.	1.	N. Y. Exchange	1,000 00
"	"	D'ft to Wall	300 00
"	"	" " "	100 00
"	3.	" " "	665 00
	5.	" " J. R. Buchanan	175 00
	8.	" " W. H. Wall	1,000 00
	8.	" " E. S. Walton	100 00
	"	" " Ames, Beattie & Co.	30 60
		Debits forward	73,847 33

1881.			
Dec.	9.	D'ft to W. H. Wall	500 00
	10.	" " " " "	500 00
	13.	By express	500 00
	15.	Cash self	1,000 00
	"	D'ft, W. H. Wall	450 00
	21.	" "	500 00
	2.	Mdse.	3 50
	6.	Do.	237 36
	10.	"	150 00
	13.	"	21 37
	16.	"	682 67
'82.			
Jan'y	2.	D'ft to A. B. Jones	150 00
	16.	Telegram	75
	21.	D'ft, Wall, cash'r	109 30
	16.	Mdse.	167 64
	24.	"	227 50
	30.	"	333 37
Feb'y	8.	D'ft to Hill, S. & Co.	300 00
	11.	" " Stevens	80 00
	2.	Mdse.	197 45
	7.	"	433 07
	8.	"	46 53
72			
July	13.	Mdse.	249 98
	13.	"	201 65
	23.	"	55 75
	28.	P'd Fenner & Co.	285 06
April	29.	" do.	279 78
July	8.	Mdse.	15 50
Dec.	26.	Interest in our favor to date	2,551 86
			$4,077 42
Dec.	26.	Balance due Estes, Doan & Co.	$13,587 68

MEMPHIS, *Dec.* 26, '82.

Credits:

1879.			
Oct.	2.	By d'ft on Becham & Moore	201 02
Nov.	25.	By proceeds 1 b. c.	47 43
	28.	" " 1 "	60 31
Dec.	3.	Dr'ge allowed on flour	2 50
'82.			
Jan'y	16.	By proceeds 5 b. c.	289 67
	"	" 3 "	180 32
	27.	" 7 "	415 72
	25.	" 1 "	55 00

Jan'y	25.	By proceeds	32	b. c.	1,901 69
	"	"	1	"	60 74
	"	"	1	"	59 32
	"	"	1	"	50 79
Mar.	6.	"	1	"	55 12
	"	"	1	"	35 55
	22.	"	11	"	640 83
	25.	"	1	"	48 40
	"	"	1	"	52 48
	26.	"	1	"	53 30
Apr.	2.	"	1	"	50 80
	5.	"	1	"	49 84
	9.	"	1	"	51 09
May	10.	"	1	"	48 26

73

May	10.	By proceeds	4	b. c.	192 44
	14.	"	1	"	44 36
	"	"	1	"	42 65
	18.	"	1	"	45 16
	27.	"	1	"	48 53
	28.	"	1	"	57 16
June	18.	"	1	"	35 87
	"	"	1	"	33 74
	22.	"	1	"	47 02
	22.	"	1	"	55 63
	"	"	1	"	62 06
July	7.	"	2	"	110 83
	31.	"	3	"	130 05
Aug.	14.	"	1	"	38 41
"	21.	"	6	"	214 06
Sept.	30.	"	1	"	50 72
Oct.	2.	"	2	"	94 63
	5.	"	1	"	53 68
	12.	"	3	"	146 12
	14.	"	10	"	477 66
	20.	"	12	"	586 19
	26.	"	2	"	103 81
		Credits for'd			7,080 96

1880.

Nov.	1.	By pro.	4	b. c.	180 76
	4.	"	1	"	54 11
	8.	"	12	"	579 05
	"	"	1	"	58 75
	11.	"	1	"	47 91
	12.	"	1	"	46 93
	"	"	1	"	47 47
	"	"	5	"	238 16
	20.	"	5	"	238 90

Nov.	8.	By pro.	3	b. c.		146 10
	12.	"	3	"		140 09
	17.	"	1	"		56 40
	19.	"	1	"		49 14
74						
Nov.	20.	By pro.	2	b. c.		100 54
	"	"	5	"		252 39
	"	"	1	"		50 17
	"	"	6	"		288 26
	"	"	4	"		190 17
	22.	"	1	"		52 73
	25.	"	2	"		91 45
Dec.	1.	"	1	"		56 73
	1.	"	5	"		249 00
	1.	"	2	"		90 48
	1.	"	7	"		350 53
	"	"	3	"		156 56
	"	"	1	"		67 45
	4.	"	11	"		600 65
	"	"	4	"		320 06
	"	"	6	"		307 30
	7.	"	1	"		42 36
	8.	"	1	"		53 37
	15.	"	19	"		1,041 59
	"	"	8	"		376 59
	"	"	47	"		2,440 83
	"	"	8	"		346 94
	17.	"	1	"		59 46
	"	"	11	"		553 67
	"	"	12	"		578 33
	18.	"	3	"		156 76
	28.	"	11	"		593 20
	21.	"	1	"		41 31
	28.	"	7	"		364 39
'81.						
Jan'y	1.	"	5	"		359 92
	3.	"	13	"		695 59
						$19,692 88
Jan'y	5.	"	5	"		248 08
	"	"	27	"		1,371 65
	"	"	1	"		55 89
	"	"	11	"		567 23
75						
Jan'y	7.	By proceed-	8	b. c.		386 85
	7.	"	1	"		45 19
	"	"	1	"		48 24
	10.	"	8	"		449 56
	"	"	4	"		207 81

Jan'y	7.	By proceed-	12	"		611 73
	10.	"	12	"		612 32
	13.	"	7	"		343 48
	17.	"	4	"		191 46
	19.	"	4	"		202 85
	28.	"	4	"		210 99
	"	"	1	"		51 18
	31.	"	2	"		126 64
Feb'y	1.	"	6	"		277 61
	3.	"	5	"		257 64
	7.	"	7	"		317 82
	"	"	11	"		480 52
	16.	"	7	"		296 18
	16.	"	14	"		710 55
	"	"	4	"		203 47
	"	"	9	"		465 25
	18.	"	4	"		175 37
	"	"	12	"		592 23
	19.	"	2	"		82 62
	"	"	2	"		81 17
	"	"	3	"		121 92
	21.	"	4	"		190 82
	"	"	14	"		698 88
	23.	"	1	"		31 14
	25.	"	2	"		95 62
Mar.	1.	"	10	"		454 34
	1.	"	1	"		46 66
	5.	"	12	"		497 84
	7.	"	9	"		437 78
	7.	"	4	"		208 40
	8.	"	6	"		310 40

76

Mar.	8.	By proceeds	1	b. c.		44 46
	12.	"	17	"		826 49
	12.	"	7	"		322 34
	15.	"	1	"		40 11
						$33,692 97

1881.

M'ch	19.	"	18	"		849 74
	21.	"	2	"		41 84
	23.	"	22	"		665 99
	26.	"	9	"		325 14
	"	"	1	"		36 25
	29.	"	7	"		275 06
	"	"	22	"		869 67
	30.	"	3	"		150 31
Apr.	1.	By am't allowed on hams and meal				12 05
	1.	By pro.	1	b. c.		46 55
	4.	"	1	"		33 51

Apr.	7.	By pro.	2	b. c.		38 03
	8.	"	18	"		577 14
	18.	"	2	"		27 68
	16.	"	29	"		1,040 43
	"	"	18	"		758 04
	18.	"	7	"		254 89
	22.	"	2	"		68 15
	27.	"	2	"		87 62
	29.	"	5	"		217 60
	30.	"	4	"		143 31
	"	"	2	"		73 37
May	2.	"	3	"		111 39
	6.	"	1	"		33 74
	"	"	3	"		71 78
	11.	"	2	"		62 95
	12.	"	1	"		33 43
	"	"	1	"		37 16
	"	"	1	"		29 83
	21.	"	15	"		420 54
	23.	"	6	"		278 27
77						
May	23.	By pro.	4	b. c.		123 00
	24.	"	7	"		340 75
June	17.	By cash for am't p'd Blaun for us				4 00
June	1.	By pro.	1	b. c.		37 19
	2.	"	2	"		70 20
	3.	"	1	"		29 34
	3.	"	1	"		28 94
	7.	"	1	"		26 39
	14.	"	1	"		38 28
	18.	"	1	"		35 24
	27.	"	1	"		36 03
	30.	"	3	"		85 80
	27.	"	1	"		32 23
	4.	"	3	"		88 22
		Credits f'r'd				42,338 91
1881.						
July	6.	By allowance on mdse				21 97
Sep.	6.	By proceeds	4	b. c.		130 91
	5.	"	1	"		55 10
	26.	"	6	"		287 54
	28	"	1	"		49 33
	"	"	2	"		100 41
	10.	"	29	"		1,471 54
	12.	"	9	"		433 20
	13.	"	13	"		92 81
	14.	"	1	"		47 21
	17.	"	1	"		41 36
	"	"	1	"		35 51

Sep.	17.	By proceeds	6	b. c.	308 34
	19.	"	9	"	435 39
	19.	"	1	"	50 56
	20.	"	2	"	96 29
	22.	"	2	"	92 71
	25.	"	1	"	51 57
	28.	"	9	"	426 15
	29.	"	8	"	382 99
Nov.	1.	"	4	"	178 37
78					
Nov.	3.	By proceeds	8	b. c.	400 42
	3.	"	2	"	93 13
	3.	"	3	"	151 98
	5.	"	4	"	202 02
	11.	"	4	"	214 67
	16.	"	2	"	95 45
	16.	"	1	"	44 52
	16.	"	5	"	240 89
	16.	"	7	"	364 02
	"	"	3	"	151 24
	16.	"	6	"	289 09
	17.	"	4	"	201 28
	18.	"	6	"	315 35
	18.	"	1	"	59 58
	19.	"	4	"	233 97
	19.	"	5	"	270 06
	19.	"	5	"	231 55
	23.	"	2	"	108 21
	23.	"	7	"	340 37
	"	"	6	"	297 30
	23.	"	2	"	103 03
	28.	"	2	"	93 08
		Credits forward			$51,629 38
1881.					
Dec.	1.	By proceeds	1	b. c.	42 41
	1.	"	12	"	667 49
	1.	"	4	"	190 04
	1.	"	3	"	139 25
	1.	"	6	"	291 15
	1.	"	2	"	95 12
	1.	"	4	"	207 38
	1.	"	2	"	100 78
	2.	"	3	"	154 04
	3.	"	5	"	246 79
	6.	"	3	"	157 81
	5.	"	7	"	329 67
	12.	"	16	"	790 22

79

Dec.	12.	By proceeds	1 b. c.		51 28
	"	"	12 "		605 65
	"	"	8 "		388 82
	"	"	2 "		94 36
	15.	"	15 "		727 36
	"	"	5 "		254 26
	16.	"	18 "		905 00
	23.	"	39 "		1,879 69
	24.	"	1 "		52 13
	"	"	6 "		290 41
	26.	"	3 "		144 36
	"	"	5 "		190 72
'82.					
Jan'y	21.	By cash for d'fts			109 30
	10.	By proceeds	1 b. c.		49 24
	11.	"	9 "		371 53
	18.	"	3 "		148 78
	"	"	2 "		103 53
	21.	"	11 "		483 87
	27.	"	13 "		611 17
	"	"	5 "		220 80
Feb'y	3.	"	3 "		133 75
	4.	"	11 "		528 91
	6.	"	4 "		167 42
	14.	"	4 "		39 93
	17.	"	2 "		114 17
	18.	"	1 "		38 92
	20.	"	5 "		208 59
	"	"	2 "		84 98
	"	"	3 "		123 60
		Credits			64,154 06
1882.					
M'ch	3.	By proceeds	15 b. c.		745 45
	4.	"	29 "		1,405 21
	5.	"	2 "		106 38
	9.	"	2 "		90 69
	15.	"	9 "		381 95
	15.	"	9 "		430 03
80					
M'ch	15.	By proceeds	12 b. c.		560 34
	15.	"	14 "		699 43
	15.	"	2 "		86 23
	"	"	11 "		488 72
	16.	"	21 "		192 21
	16.	"	2 "		95 96
	17.	"	1 "		42 93
	23.	"	1 "		41 51
	27.	"	1 "		43 55

M'ch	27.	By proceeds	7	b. c.	323 84
Apr.	6.	"	9	"	343 45
	15.	"	1	"	33 77
May	6.	"	1	"	37 59
June	1.	"	2	"	98 17
	12.	"	1	"	53 20
	19.	"	1	"	35 07
					70,489 74
Dec.	26.	Balance due Estes, Doan & Co.			13,587 68
					84,077 42

Certificate to Deposition-.

I hereby certify that the foregoing depositions were taken before me, as stated in the caption, and reduced to writing by me in the presence [of] the witnesses, respectively; that I am not interested in the said cause, nor of kin or counsel to any [or] either of the parties thereto, and that I have sealed the said depositions and deposited them in the post office at Memphis, Tenn., addressed to the clerk of said court at Oxford, Miss., they not having been out of my possession or altered since they were taken.

Witness my hand and seal this the 29th day of December, 1882.

[L. S.] M. TREZEVANT, [SEAL.]
Notary Public.

Fee, $16.60, paid by complainants.

Upon the foregoing deposition is the following endorsement: "Opened & filed Jan'y 1st, 1882. G. R. Hill, cl'k."

And on the 16 July, 1883, the following motion was entered in said cause:

81 *Motion to Remand & Rules to Take Proof, &c.*

ESTES, DOAN & CO. *v.* S. G. SPAIN *et als.*

Respondents move the court to remand this cause to rules, and to grant ninety days' leave to respondents to take further testimony in this cause—

Because respondents have discovered (recently and since the expiration of the time limited by law for taking respondents' depositions) the existence & importance of the testimony of — Carlton, of which respondents had no knowledge prior thereto.

LAMAR, MAYES & BRANHAM,
SULLIVAN & SULLIVAN, *Sol's.*

Filed July 16, 1883.

G. R. HILL, *Clerk.*

And, to wit, on said 16th day of July, 1883, the same being a day of the June term of said court, A. D. 1883, an order was made in said cause as follows:

Order. Leave to Take Proof & Leave to Withdraw Funds, &c.

ESTES, DOANE & CO. *v.* S. G. SPAIN *et als.*

In this cause it is ordered that this cause be remanded to rules, and 15 days' leave is granted to respondents to take further testimony, and that complainants have 15 days in which to take testimony in rebuttal, and should complainants take testimony not in rebuttal, then respondents shall have ten days further in which to take testimony rebutting that.

It is further ordered that complainants be permitted to take custody of the funds in this case, to be held subject to the order of this court, upon complainants entering into proper bond,
82 with sufficient security, to be approved by the clerk of this court.

Ordered July 16, 1883.

R. A. HILL, *Judge.*

And on the 7 August, 1883, the following interrogatories to & deposition of Walter Carlton, taken in behalf of respondents, was filed, to wit:

Dep. of Carlton.

IN the United States District Court for the Western Division of the Northern District of Mississippi. In Equity.

ESTES, DOAN & CO. *vs.* S. G. SPAIN *et als.*

We agree that the deposition of Walter Carlton may be taken upon the following direct & cross-interrogatories before any officer qualified by law to administer an oath, and that when so taken the same may be read in evidence for respondents upon the trial of this cause, subject to objections for irrelevancy & incompetency only, waiving issuance of commission, notice, & all formalities, provided counsel on either side shall be present or represented when such deposition is taken.

July 21, '83.

SULLIVAN & SULLIVAN,
LAMAR, MAYES & BRANHAM,
Sol's for Resp'ts.

TAYLER & KYLE,
WRIGHT, FOLKES & WRIGHT,
HALL & BOOTHE,
Sol's for Compl'ts.

Interrogatories to be Propounded to Walter Carlton.

1. What is your name, age, residence, & occupation?

2d. Have you any interest in the result of this suit? Are
83 you related to either of the parties? Are you related to E. A. Carlton?

3d. Did you attend any "concert rehearsals" over the store-room of S. H. Gunter in Sardis, Miss., during nights in March, 1882, prior to 25 March, 1882? If yes, please state whether or not you heard any unusual noises in said Gunter's store; &, if yes, tell all about it, when and where this occurred, how often, upon how many nights; what times at night.

4th. Do you know how S. H. Gunter was selling goods just prior to his assignment (March 25, 1882); if yea, was he selling few or many, cheap or high, cash or credit? Please state all you know. Please state fully also all you know, if anything, about the sale of a lot of hats & caps & suspenders by S. H. Gunter just about that time, and particularly as to the price they sold for & the ordinary value of them in this market at that time.

5th. Please state fully anything else you may know that would be of benefit to either party in this case, & state further & specially what you know, if anything, about missing goods from centre counter in Gunter's store.

SULLIVAN & SULLIVAN,
LAMAR, MAYES & BRANHAM,
Sol's for Respondents.

Ans. 1. Walter Carlton; age, 24½ y'rs; reside-, Sardis, Miss.; merchant.

Ans. 2. None. No. No.

84 Ans. 3. Yes; can't say that they were unusual noises. I heard some walking in the store & some knocking, but don't know what they were doing or who was in the store; don't know the time the noise occurred or the time of night it occurred, nor how often; just recollect it was a short time before S. H. Gunter's assignment.

Ans. 4. Do not know how he was selling goods, whether few or many; don't know whether he was selling for cash or on a credit, & don't know whether he sold cheap or high. I know that we had a clerk to go & buy a job lot of hats & suspenders & they were bought at less than the regular prices, but the hats were a job [lot] consisting of several kinds; don't know how many hats were in the lot, or the suspenders, but know that our books show that we paid $3.50 for the lot. I guess the average value of the hats at wholesale would be about $7.00 doz.

Ans. 5. Don't know anything else. I passed through Mr. Gunter's store occasionally & he had a middle counter filled with goods, & a short time before the assignment I passed through the store & noticed the goods had been removed, but don't know where the goods had been taken or what disposal had been made of them; don't know that they were taken from the store; they may have been boxed up

or put away. I didn't look about the store to see where the goods were; don't recollect what kind of goods were on the counter
85 or how many; the goods may have been removed to some other part of the store; instead of the dry-goods on the counter — was a lot of hoes & rakes, as well as I recollect.

WALTER CARLTON.

Sworn to & subscribed before me this 20th day of July, 1883.

J. B. BOOTHE,
U. S. Com'r.

Filed Aug. 7, 1883.

G. R. HILL, *Clerk.*

And, to wit, on the same day was filed the deposition of W. A. Dugger, for respondents, which is as follows:

Dep. of W. A. Dugger.

In the United States District Court for the Western Division of the Northern District of Mississippi.

ESTES, DOAN & Co. *vs.* S. G. SPAIN *et als.*

We agree that the answers to the annexed interrogatories & cross-interrogatories propounded to Wm. Dugger may be made, signed, & sworn to before any officer qualified to administer an oath, & when so taken may be read in evidence upon the trial of the above-entitled cause, subject to objections for irrelivancy & incompetency alone.

The issuance of commission, notice, [and] all mere formalities are hereby waived. This agreement is made upon condition that neither party to this suit shall be present in person or represented by counsel or otherwise during the taking of said deposition.

TAYLOR & KYLE,
HALL & BOOTHE,
Sol's for Compl'ts.

Interrogatories to be Propounded to Wm. Dugger.

1st. What is your name, age, residence, & occupation?

86 2d. Are you acquainted with the parties to this suit? Are you acquainted with S. H. Gunter?

3. Have you ever had any business relations with S. H. Gunter; if so, when, where, & how long, & what was the relation?

4. Are you acquainted with S. G. Spain; if so, do you know what business, if any, he was engaged in on 25th March, 1882, & prior thereto, & what was his relations with S. H. Gunter? Was Spain solvent or insolvent then? Do you know what Spain is now engaged in; if yea, what & where?

5. If you say you were S. H. Gunter's clerk at & before the time he failed in business in March, 1882, then please state whether or not he owed you at that time; &, if yea, how much money, if any,

did he pay you? Did he or not give you any security or transfer to you any collateral? If so, please tell what it was, when it was, & where it was.

6. Do you know of S. H. Gunter selling, renewing, or secreting, or disposing of in any way any goods in an unusual manner? If so, tell all about it, please.

7. Do you know anything about any money being taken out of the cash drawer or elsewhere in Gunter's store just before he made an assignment & failed, in M'ch, 1882? If so, tell all about it.

87 8. Do you know of anything unusual about the disposal of any money or goods or property of S. H. Gunter just before 25 March, 1882, or on that day or near that day?

9. Do you know whether or not S. H. Gunter had on hand any money on 25 March, 1883, at time of his failure & assignment; if so, what do you know about it; how much was there?

10. Do you know of the disappearance of a tierce of hams from Gunter's store in March, 1882? If yea, tell all you know about it.

11. Do you know anything of what became of the goods that were accustomed to stay on the counter in the center of the store of S. H. Gunter? If yea, tell all about it.

Do you know of anything strange or unusual that you have not already told about connected with S. H. Gunter's business at or about the time of his assignment?

We decline to cross-examine the above-named witness.

TAYLOR & KYLE,
HALL & BOOTHE,
WRIGHT, FOLKES & WRIGHT,
Sol's for Compl'ts.

1. Wm. A. Dugger is my name; residence, Jackson, Tennessee; occupation, merchant.

88 2. I am acquainted with both parties in the suit now pending—Estes, Doan & Co. *v.* S. G. Spain *et al.*, & I — well acquainted with S. H. Gunter.

3. I was employed by S. H. Gunter as salesman in his store in Sardis, Miss., for a number of years and was with him up to the time of his assignment, March 25th, 1882.

4. I am well acquainted with S. G. Spain. He was employed by S. H. Gunter as his book-keeper and was with him for several years prior to and up to the time of the assignment *was* made March 25th, 1882. So far as Mr. Spain's finances were concerned at that time, I know nothing definitely in regard to it. I left Sardis nearly a year ago, and consequently know nothing of Mr. Spain's business engagements now.

5. At the time of the assignment Mr. Gunter owed me but paid me no money. He gave me a sight draft for the full amount on Wm. Dugger, Sr.; this took place in the store-house on the night of the assignment.

6. About the time of the assignment Mr. Gunter did take a good many goods from the store to his house.

7. In regard to money being taken from the cash drawer just before the assignment I know nothing, except that Mrs. Gunter
89 herself took money from the cash drawer, but this was nothing unusual for she had done this at her pleasure for years and nothing was ever thought of her so doing.

8. In regard to the disposal of monies, Mr. Spain, the book-keeper, had control of the safe and its contents, and I, only acting as salesman, could know nothing of its disposal.

9. At the time of the assignment the safe was said to contain between eighty and ninety dollars. So far as any personal knowledge is concerned I can testify nothing.

10. I know nothing of the disappearance of a tierce of hams from the store just before the assignment. I opened a tierce of hams & sent about one hundred pounds to Mr. Gunter's house a few days before the assignment.

11. In regard to the goods on the center counter of Gunter's store, I know nothing of the unusual disappearance of any of them. Clothing was generally kept on this counter.

Witness my hand this 26th day of July, 1883.

W. A. DUGGER.

Sworn to and subscribed before me this 26 day [of] July, 1883.

J. T. RUSHING, *J. P.*

THE STATE OF TENNESSEE, *Madison County:*

I, Edwin A. Clark, clerk of the county court of said county, do certify that J. T. Rushing, Esqr., whose genuine signature
90 appears to the foregoing and attached affidavit, is, and was at the time of signing the same, an acting justice of the peace of said county, and all his acts as such are entitled to full faith and credit.

Given under my hand & seal of office, at office, in the city of Jackson, on the 26th day of July, 1883.

[L. S.] E. A. CLARK, *Clerk,*
By J. B. CLARK, *D. C.*

Affidavit	.25
Clk's certificate & seal of office	.50
	.75

Filed Aug. 7th, 1883.

G. R. HILL, *Clerk.*

And, to wit, on the same day, 7 Aug., '83, the deposition of E. A. Carlton, for respondents, was filed, which is in the words, &c., following, to wit:

Dep. of E. A. Carlton.

In the United States District Court for the Western Division of the Northern District of Mississippi. In Equity.

ESTES, DOAN & Co. *vs.* S. G. SPAIN *et al.*

We agree that the deposition- of E. A. Carlton, Walter Carlton, & ——— ——— may be taken before J. B. Boothe, U. S. com'r, informally, and read in evidence for respondents in this cause upon the trial, subject only to objections for irrelevancy & incompetency, & we waive issuance of commission, notice, & all matters of form.

July 21, 1883.

LAMAR, MAYES & BRANHAM,
91 SULLIVAN & SULLIVAN,
Sol's for Def't-.
TAYLOR & KYLE,
HALL & BOOTHE.
WRIGHT, FOLKES & WRIGHT,
Sol's for Comp'ts.

Interrogatories to be Propounded to E. A. Carlton, a Witness for Respondents.

1. What is your name, age, residence, & occupation?

2. Are you acquainted with S. H. Gunter & with the parties to this suit?

3. What has been your occupation for the past ten years?

4. Are you acquainted with S. G. Spain? If yea, what has been his occupation, if you know, for the past few years? Where has he resided, and is he solvent or insolvent?

5. Do you know whether S. G. Spain was solvent or insolvent on 25 March, 1882? If yea, state whether he was then solvent or insolvent, and what position he then occupied & what were the relationships between him & S. H. Gunter, if you know.

6. Where were you at night during the nights, say from 10 to 12 o'clock, just immediately preceding the night of 25 March, 1882? Did you attend any rehearsals for a concert about that time & where?

7. If in answer to 6th interrogatory you should state that you were attending "rehearsals" for a "concert" over the store-room of S. H. Gunter, in Sardis, then please state whether or not you
92 heard any unusual noises underneath in said store-house, & if yea, state fully about it.

8. Did you have any conversation or transactions with S. H. Gunter on the night of 25 March, 1882? If yes, tell all about it & what the transaction was?

9. Do you know of any goods missing from the store of S. H. Gunter just preceding 25 March, 1882?

10. Do you know of any money taken from the cash-drawers of the store of S. H. Gunter just prior to 25th March, 1882? If yea, tell all about it; & if yea, was any account upon any of the books kept of it?

11. Do you know whether or not S. H. Gunter had on hand any money on night of 25 March, 1882, at time he made an assignment? If yea, tell how you know it & all about it.

12. Do you know of any unusual amount of goods being sent away from the store just prior to 25 March, 1882?

13. Do you know anything of a tierce of hams received by S. H. Gunter at his store in Sardis just preceding 25 March, 1882? If yea, please state the date when received and all you may know as to said hams, what became of them, & their history generally.

14. How was Gunter selling goods just prior to 25th M'ch, '82; on what terms—as usual or for cash; & if for cash, at usual prices or less? Tell fully. Do you know as to any sale of hats or
93 caps or suspenders by the house of Gunter about that time?

15. Are you acquainted with Mrs. Gunter, the wife of S. H. Gunter; if yea, what business is she now engaged in; with whom, if with anybody, & where? If you say she is merchandising, please state when she begun & in what store & in what town & what was her financial condition when she begun merchandising, if you know. What is the nature, kind, & value of the stock now in her business, or extent of business? Is her firm (if she has any) buying on credit or for cash?

16. Who are present while you are now testifying, & where are you now at?

17. Are you related to either party to this suit? Have you any pecuniary interest in the result of this suit?

18. Was Mrs. Gunter ever engaged in merchandising before, & where is S. H. Gunter & what business is he now engaged in, if you know?

19. Have you or not seen S. H. Gunter at unusual hours of the night at his store just before the assignment; &, if yea, what did he say about it, if anything? Do you know of any other transfers of claims by S. H. Gunter to anybody at or about the time of his assignment? Who were Mr. Gunter's clerks & book-keeper at the time of the assignment?

20. If you now recollect of anything else which you have
94 not already testified to, & which would benefit either side, please state it fully.

SULLIVAN & SULLIVAN,
Sols. for Respondent.

Cross-Interrogatories Propounded to E. A. Carlton, a Witness for Respondents.

X Int 1. In answer to direct interrogatory No. 4 you say S. G. Spain is insolvent and was so at the date of Gunter's assignment. Did you not in the summer of 1882 propose to Spain to go into business with him?

X Int. 2. Can you state positively at what time you missed the dress goods and trimmings referred to in your answer to Int. 9 and exactly the amount of goods so missing? Might they not possibly have been sold without your knowledge? Do you know what became of them?

X Int. 3. What amount did Gunter owe you just prior to or at the time of making the assignment?

X Int 4. Did you or Mr. Spain keep the cash account of Gunter's house? State exactly the date and the number of times when you missed money, as stated in your answer to Int. 10, and the amounts so missed. Have you each time counted the cash in the drawer before you missed any of it? Do you know positively that the sums so missed were not charged in the cash account?

X Int. 5. How many hams and how much sugar, lard, cotton-seed oil, & flour do you know of being sent away from the store, as stated in your answer to Int. 12? On what dates were said goods sent away, how much each time, and where were they sent?

95 X Int. 6. You say in answer to Int. 15 that Mrs. Gunter & Mr. Spain are merchandising together. Do you not know that they began merchandising on an old stock of goods bought of G. W. Ballentine, and that said stock was bought on credit?

X Int. 7. State whether S. H. Gunter has a large or small family. Are not several members of the family young ladies whose support would naturally be expensive? Is it not true that he had no other source of support for his family except his store & his business there?

X Int. 8. Did you not, soon after Mrs. Gunter & Mr. Spain went into business, apply to them through your father for employment, or signify your willingness to do business for them?

X Int. 9. Have you been subpœnaed as a witness in this case, or do you not testify without having been legally summoned?

X Int. 10. Are you not unfriendly to Mr. & Mrs. Gunter?

X Int. 11. Did you not some time since write a letter to Bickham & Moore, of New Orleans, or some other attaching creditors, stating what you could prove, and volunteering your services as a witness in this case?

X Int. 12. Had not Gunter some time before his assignment bought a large stock of goods under a sale by the assignee of Cary & Richardson at a low price, and were not these goods, or many of them, still in the stock at the time of Gunter's assignment, and had they not been offered at low prices because of the low price at which they were bought?

96 Int. No. 1. Answers: Name, E. A. Carlton; occupation, farmer; age, 30. I reside at Sardis.

No. 2. I am.

No. 3. Clerk for S. H. Gunter.

No. 4. I am book-keeper for S. H. Gunter.

No. 5. Insolvent & was book-keeper for S. H. Gunter. Relationship friendly.

No. 6. I was in Sardis & don't remember exactly.

No. 7. I did, in Walt's Opera Hall. I did not hear any unusual noise that I remember.

No. 8. I saw Mr. Gunter that night as soon as he told me of the assignment, & asked him what he was going to do about the money he owed me. He stated that the only thing & the best thing he could do was to give me claims, which he did, about 1,500, fifteen hundred, dollars.

No. 9. I missed some dress goods, one or two bales of cassimer & fine trimmings.

No. 10. I missed some money on several occasions & spoke to Mr. Dugger about it & he & I noticed to see what became of it. We saw Mrs. Gunter take money out of the drawer & put it in her pocket. I told Mr. S. G. Spain about it & he stated that it was her money. I am willing to swear to the best of my knowledge that there was no account kept of it.

No. 11. I asked Mr. Gunter if he had any money on hand; &, if so, I would like that he would pay me a little. He told me that he had, I think, eighty some odd dollars in the safe, & that it was included in the assignment & he could not touch it.

No. 12. I know of some hams, coffee & sugar, lard & cotton-seed oil & flour.

No. 13. I know of receiving tierce of hams just before the
97 assignment, & Mr. Gunter told me not to open them, & the tierce disappeared, & I do not know what became of it.

No. 14. He was selling goods principally for cash, except a few 30-day bills, & selling them cheap; some at usual prices, & some for less. I do not know of any hats, caps, & suspenders sold by the house.

No. 15. I am. She is partner of S. G. Spain in the mercantile business in Sardis, Miss. About November, 1882. In the brick store of Mr. G. W. Ballentine. I do not know her financial condition. I do not know the nature, kind, & value of the stock, nor the extent of the business. I do not know whether they buy on a credit or for cash.

No. 16. In the office of Booth, J. B., & McGhee in the presence of Judge J. G. Hall, J. C. Kyle, J. B. Booth, Capt. R. H. Taylor, H. M. Sullivan, Mrs. S. H. Gunter, S. G. Spain, & S. H. Gunter.

No. 17. I am no relation to either party in this suit, & have no pecuniary interest in the result of this suit.

No. 18. Not that I know of. S. H. Gunter is with Mrs. Gunter & Spain selling goods for them.

No. 19. I know that Mr. W. A. Dugger got claims. Clerks were W. A. Dugger & E. A. Carlton; S. G. Spain, bookkeeper. I saw Mr. S. H. Gunter & S. G. Spain at the store just before the assignment at late hours in the night. I asked them what they were doing there so late at night. Mr. Gunter told me that Mr. S. G. Spain was behind with the books, & he wanted him to get up with them.

No. 20. I do not know of anything that I have not testified to that would interest either party of the cause.

98 *Answers to Cross-Interrogatories.*

X No. 1. I asked Mr. Spain if he did not wish to go into business with me in the summer of 1882 for this reason: Soon after the assignment he told me to just hold up a few days; that Mr. Gunter would be all O K in [a] few days. I did this to learn what they were doing.

X No. 2. I cannot state positively what time I missed them, but it was before the assignment, 10 or 15 days. I cannot state the amount of goods missed, but some of the goods I know were not sold, for I saw the dress goods probably a bolt or two, that I — as soon as they were wrapped up, while some of the goods may have possibly been sold. I do not know what became of them.

X No. 3. I cannot state the amount exactly, but with interest it would have been between 2,500.00, twenty-five hundred, & 2,800.00, twenty-eight hundred, dollars.

X No. 4. Mr. Spain. I cannot state the times or the amount of money missed. I did not count the cash each time, but I did on several occasions, and on one occasion Mr. Gunter asked Mr. Dugger if he took any money out of the drawer. He told him that Mrs. Gunter had it. I have forgotten the amount. I do not know positively that the money was not accounted for on the cash-book.

X No. 5. I have forgotten — amount exactly, but I think there were 2 or three bbl-. sugar & a sack or two of coffee, 20 gals. cotton-seed oil, for I helped to draw the oil myself. I do not know where the hams went to. I do not know the dates or the amount
99 sent at a time, but just a few days before the assignment. I do not know where all were sent to, but I was instructed to direct the dray to Mr. Gunter's house two or three times myself.

X No. 6. I do not know.

X No. 7. He has a large family; they are several of them young ladies. Yes, it is true that he had another source of support except his store, to the best of my knowledge.

X No. 8. I did not.

X No. 9. I have not been legally summoned to testify.

X No. 10. I am.

X No. 11. I told M-r-. Bickham & Moore that I could from what I wrote him, I think, or that I would be willing to swear to it; to the best of my knowledge, I did write to them, but do not remember when. I voluntarily offered my services.

X No. 12. Yes, he bought a stock of goods formerally owned by Cary & Richardson, at 53 cents, and a great many were still in the stock. I should say ¼ were still on hand. They were offered at low prices because of the price at which they were bought.

E. A. CARLTON.

Sworn to and subscribed before me this 21st day of July, A. D. 1883.

J. B. BOOTH,
U. S. Commissioner.

$2.00 witness' fees, pa- by respondents July 21, '83.

E. A. CARLTON.

" Filed Aug. 7th, 1883.

G. R. HILL, *Clerk.*

The depositions of Spain & Gunter are as follows, to wit:

100 In the United States District Court for the Western Division of the Northern District of Mississippi. In Equity.

ESTES, DOAN & CO. } No. 283.
v.
S. G. SPAIN *et al.* }

We agree that the depositions of S. G. Spain & S. H. Gunter may be taken before J. B. Booth, U. S. commissioner, informally, and read in evidence for complainants in this cause upon the trial, subject only to objections for irrelevancy and incompetency, and we waive issuance of commission, notice, and all matters of form.

September 24, 1883.

TAYLOR & KYLE.
HALL & BOOTH.
WRIGHT, FOLKES & WRIGHT,
Sol's for Compl'ts.
SULLIVAN & SULLIVAN.
LAMAR, MAYES & BRANHAM,
Sol's for Resp't.

Deposition of S. G. Spain.

S. G. SPAIN, being duly sworn, deposed as follows:

Int. 1. State your name, residence, and occupation, and whether you know the parties to this suit.

Ans. Sidney G. Spain; Sardis; merchant. I know the parties to this suit, some personally, & some by business relations.

Int. 2. State whether you were familiar with the business of S. H. Gunter prior to his assignment, on the 25th day of March, 1882. Did you hold any position in his business; if so, what?

101 Ans. I was familiar with the business of S. H. Gunter prior to his assignment. I held the position of book-keeper and salesman in his house from Sept., 1876, to time of his assignment.

Int. 3. Examine the account attached as "Exhibit A" to the deposition of Z. N. Estes, a witness in this cause, and state whether or not you know anything about the correctness of said account, and whether or not it had been paid at the time Mr. Gunter's assignment was executed.

Ans. The ac. is correct to the best of my knowledge & belief. S. H. Gunter owed Estes, Doan & Co. about that amount, which had not been paid at the time of his assignment.

Int. 4. Do you know the reason why said debt was preferred in said assignment? If so, state it fully.

Ans. This debt was preferred on account of its being largely for cash advanced to pay other creditors & because of the short time in which they had the benefit of his trade. S. H. Gunter had done very little business with Estes, Doan & Co. previous to this season, & they had made but little profit on this, it being entirely for cash & staple supplies on which there was a very small margin of profit. His trade with the other parties to this suit extended through a long period of time, & they had made large profits out of his business. I knew of no other grounds of preference.

Int. 5. Were your relations with Mr. Gunter intimate or otherwise? Do you know with whom, if any one, he advised most freely about his business affairs?

102 Ans. My relations with S. H. Gunter were very intimate. He advised very freely with me about his business, more freely I think than with any one else. I don't know of his advising freely with any other parties.

Int. 6. State whether or not you were familiar with the circumstances attending Gunter's assignment, if so, state whether there was to your knowledge any unfair or fraudulent transactions or device connected with said assignment, or any attempt to defraud Gunter's creditors in any way whatever.

Objected to.

Ans. I was familiar with all the circumstance- of S. H. Gunter's assignment. I do not know of any unfair or fraudulent transactions connected with this assignment, or of any attempt to defraud his creditors.

Int. 7. E. A. Carlton, a witness for the respondents, has stated that you are insolvent. State the facts about this matter fully.

Ans. I commenced clerking for S. H. Gunter in September, 1876, & my salary up to the time of his assignment amounted to about $4,500.00, & my income from my salary as town clerk & treasurer $600.00, & from rents & other sources about $1,000.00, an aggregate of over $6,000.00; my expenses during that time were less than $3,000.00. I owed but one legal debt of any size, & that I had arranged before. E. A. Carlton and myself had frequent conversations about going into business together before & after S. H. Gunter's assignment, & he knew from my own statements that I was not insolvent & that I could raise money to start in business.

103 Int. 8. Said witness, E. A. Carlton, has also stated that soon after Gunter's assignment you told him to "just hold up a few days; that Mr. Gunter would be all O K in a few days." State whether you ever made such statements; & if so, when, where, and under what circumstances?

Ans. I never made any such statement.

Int. 9. Do you know anything about the disappearance from the store of dress goods, trimmings, and a tierce of hams, or of goods from the middle counter of said store; or of the sale of a certain lot of hats to the witness, Walter Carlton? If so, state fully all you know about said matters?

Ans. I do not know of the disappearance of any dress goods from center counter or of a tierce of hams. I do not believe any tierce of hams or any considerable or unusual amount of goods could have been moved from any portion of the building without attracting my notice. I do not know of the sale of hats.

Int. 10. Examine the bill now handed to you & marked Exhibit A to this deposition, & state whether or not it is a correct bill for a tierce of hams purchased from Estes, Doan & Co. by S. H. Gunter; if so, state whether Mr. Gunter bought any other tierce or lot of hams after the date of said bill & prior to his assignment.

Ans. The bill is correct to the best of my knowledge, & it is the last bill of hams bought by S. H. Gunter prior to his assignment. This tierce of hams was opened and sold in the usual way.

Int. 11. State if you know whether Mr. Gunter within any short time prior to his assignment took from the store any unusual
104 quantity of goods or provisions. State also whether Mr. Gunter's family is large or small and from what source, if you know, they had usually been supplied?

Ans. I do not know of any unusual quantity of goods being taken from the store by S. H. Gunter within a short time of his assignment. Mr. Gunter has a large family, which was always supported from the store & no other source.

Int. 12. State whether Mrs. Gunter held any position in the store; and, if so, what.

Ans. Mrs. Gunter held the position of salesman in the store for about three years prior to assignment.

Int. 13. Witness, E. A. Carlton, has stated that he saw Mrs. Gunter take money out of the drawer & put it in her pocket, and that he told you about it & you stated that it was her money. State whether any such conversation occurred between you & Carlton. State also whether you know if any money — missing from the drawer & not properly accounted for, & what was the habit, if any, of clerks & persons connected with the store as to taking money from the drawer?

Ans. No such conversation occurred. It is impossible that I could have forgotten a conversation of this tenor, or one involving the integrity of any one in the store. I do not know of any money being missing from the drawer & not accounted for. It was the habit to pay small amounts from cash-drawers & put in tickets to represent the amounts, which were counted & charged up to the proper parties at the close of the day's business.

105 Int. 14. Do you know anything about the purchase by S. H. Gunter of a stock of goods from the assignee of Cary & Richardson? If so, state whether any part of said stock was on hand at the time of Gunter's assignment, & about what proportion of the same, & whether said goods were sold for the usual price or less. State also whether there was any reason for selling hats, winter clothing, &c., for low prices.

Ans. About 12 months before his assignment S. H. Gunter bought a stock of goods of the assignee of Cary and Richardson amounting to about $7,000.00, at 53c. on the dollar. Nearly half of these goods were on hand at [the] time of this assignment. These goods were

sold at about New York cost, which was 50 per cent. below usual prices. The purchase of this stock gave a large over-stock or surplus in hats and winter clothing, & these were sold at largely reduced prices, in order to reduce this portion of the stock to its usual proportion in the general stock.

Int: 15. State, if you know, whether any part of the indebtedness of S. H. Gunter to Bickham & Moore was for losses on cotton futures; and, if so, how much.

Ans. About $800.00 of the amount of the indebtedness that had accrued up to the date of this assignment to Bickham & Moore was for losses on cotton futures.

Int. 16. Are you in business now; if so, what business, and who is your partner, if you have one?

Ans. I am engaged in merchandising in the town of Sardis, Miss., & Mrs. F. A. Gunter is my business partner.

Int. 17. Of whom did you purchase the stock of goods with which you begun business, and what did the stock amount to at
106 prime cost? State also what you & Mrs. Gunter paid for the stock and whether you bought for cash or on credit.

Ans. We purchased the stock of goods upon which we commenced business of G. W. Ballentine. It is invoiced at cost [at] about $7,200.00. We paid him 60 cents on the dollar, which amounted to about $4,200.00, which was the amount we paid. We bought the stock entirely on credit, executing our notes for the entire amount.

Int. 18. State whether Mrs. Gunter gave any attention to the business; if so, how much, and in what way.

Ans. Mrs. Gunter gave her entire attention to the business. She is a regular salesman, & also purchases a large amount of the stock.

Cross-Interrogatories to S. G. Spain.

X 1. Before the assignment of S. H. Gunter you & Mrs. Gunter were his clerks, were you not?

X 2. Since the assignment S. H. Gunter is clerking for you & Mrs. Gunter, his wife, in Sardis, is he not?

X 3. You were S. H. Gunter's book-keeper, confidential friend & adviser, from 1876 until his assignment, were you not?

4. You were S. H. Gunter's assignee in the assignment, were you not?

5. Did S. H. Gunter owe you at the time of his assignment; &, if so, how much, & did he pay you; &, if so, when, where, & how, what time of day or night, at what place?

6. Does S. H. Gunter's ledger show such payment & transfer of claims?

7. Did you own any real estate then yourself, except homestead; if so, where located & what value?

107 X 8. Did you own then any personal property above your exemptions; &, if so, what was it & its value?

X 9. Did you have any other property above your exemptions besides money and what you say Gunter owed you?

X 10. What indebtedness did you then owe?

X 11. Have you collected the claims you executed from S. H. Gunter? If not, then state about how much you have collected, if any; and are all of such claims collectable, & were they collectable or reputed solvent profits at the time of the Gunter assignment?

X 12. Were you present when the assignment was written, signed, acknowledged, [and] filed for record? If so, please state the time of day or night each occurred.

X 13. Were you present when the trust deed from Gunter to Hall, dated 25 March, 1882, was written, filed for record, signed, & acknowledged? If so, please tell.

X Int. 14. Which was handed to the clerk for filing & record first, or were they handed to him at different times or together at the same time; & was any instruction then given to the clerk by the person so handing them to the clerk? And, if so, please tell all about it & who handed them to the clerk, & where was the assignment when the trust deed was handed to the clerk.

X Int. 15. How long were you in examining Ex. A to the deposition of Z. N. Estes? Did you examine each & every item of said account; and do you know of your personal knowledge that each & every item thereof is correct?

X Int. 16. Is it not a fact that all you know of the correctness of said account is what you have learned from Mr. Gunter or others?

108 X Int. 17. All you know of its correctness is from statements of others, is it not?

X Int. 18. Mr. Gunter may have paid this account in part or in whole without your knowledge, might he not?

X Int. 19. How do you know the reason why Gunter preferred Estes, Doane & Co. in the assignment?

X Int. 20. Have you read the bill & papers & depositions in this cause, or have you read any of them or heard any of them read, &, if year, which?

X Int. 21. Had B. Lowenstein & Bros. made large profits out of *his* business with Gunter? Do you know of your own knowledge why B. Lowenstein & Bros. were preferred in the assignment?

X Int. 22. Was that the only reason; & how do you know what you state about it?

X Int. 23. Did you not have some conversation with E. A. Carlton soon after Gunter's assignment, in which you used language mentioned in direct int. No. 8? Please tell fully all about this.

X Int. 24. You have stated that the tierce of hams were opened and sold in the usual way; please state who opened and who sold it.

X Int. 25. How do you know that the account for hams marked Ex. A to this deposition is correct; how do you know that the date of it is correct, & how do you know that that was the last tierce of hams bought by Gunter? Tell all you know about it.

X Int. 26. Did Mrs. Gunter take money out of the cash-drawer before the assignment?

X Int. 27. Did S. H. Gunter have money in the hands of Wm. Dugger at the time of the assignment?

X Int. 28. Do you know whether or not W. A. Dugger was a clerk & creditor of S. H. Gunter; &, if yea, did Gunter
109 pay him; &, if so, when, where, how, & how much?

X Int. 29. How many horses & mules did Gunter have at time of assignment, & what became of them?

X Int. 30. Has yours and Mrs. Gunter's debt to Ballentine been paid in whole or in part; if so, how much & how & who paid it, & where did this money come from?

X Int. 31. Is it not a fact that all the cotton that S. H. Gunter shipped for several weeks—say two months—next prior to his assignment was shipped to Estes, Doan & Co., and that he did not, during that time, ship any to Bickham & Moore, or pay them anything or ship any to any of his creditors except Estes, Doan & Co.?

X Int. 32. How much of Estes, Doan & Co.'s debt is for cotton futures? Is any of it?

X Int. 33. Please state first how the $800 was contracted for cotton futures of Bickham & Moore's debt; explain fully, if you know.

X Int. 34. Were the books of S. H. Gunter correctly kept, & did they show correctly his condition at the date of his assignment?

X Int. 35. When the U. S. deputy marshal came to levy upon the Gunter stock did he demand that you open the iron safe, & did you decline, & did Gunter decline?

Answers to Cross-Interrogatories.

Ans. to X Int. 1. We were.

Ans. to X Int. 2. He is.

Ans. to X Int. 3. I was.

Ans. to X Int. 4. I was.

Ans. to X Int. 5. He owed me about $550.00, and he paid me in claims at the time of his assignment, about 25th March, 1882; I do not remember the exact day, nor the hour of the day.

110 Ans. to X 6. It does.

Ans. to X 7. I did not.

Ans. to X 8. I did. I had $350.00 in money in addition to the amount due me by S. H. Gunter.

Ans. to X 9. I did not.

Ans. to X 10. I owed Wm. R. Moore & Co. a debt of about $1,200.00. I do not remember any other debt.

Ans. to X 11. I have collected a portion of them—about $400.00; a portion of these claims were not fully secured, & I regarded them as solvent only to the extent of the property mortgaged.

Ans. to X 12. I was. It was written on the 25th of March, commencing, I think, about 7 o'clock in the evening, & was finished & signed some time between 11 & 12 o'clock the same night. It was acknowledged & filed for record, to the best of my knowledge, between 11 & 12 o'clock the same night.

Ans. to X 13. I don't know when this deed was written, but to the best of my knowledge it was filed for record the same night; I was present when it was filed.

Ans. to X 14. My recollection is that the trust deed was presented to the clerk first; I don't remember about any instructions on this point, & I do not remember who handed them to the clerk. I do not remember where the assignment was when the trust deed was handed in for record.

Ans. to X 15. I suppose about 5 minutes; I did not examine each & every item; I do not know of my own personal knowledge that each and every item is correct.

Ans. to X 16. It is not a fact that my only knowledge is from Mr. S. H. Gunter & others. I know the amount of Estes, Doan & Co.'s account from statements rendered before Mr. Gunter's
111 assignment, & that statement, which corresponds with this, I know to be correct.

Ans. to X 17. I know that S. H. Gunter owes Estes, Doan & Co. about the amount of the account rendered here from accounts rendered prior to his assignment—accounts rendered by Estes, Doan & Co.

Ans. to X 18. No.

Ans. to X 19. From his own statements.

Ans. to X 20. I have heard the deposition of A. E. Carlton only.

Ans. to X 21. I think not. Mr. Gunter had traded but a short time with B. Lowenstein & Bro. They were preferred on precisely the same grounds that Estes, Doan & Co. were, the debt being of very recent date, with no previous profits to counterbalance their loss.

Ans. to X 22. I know of no other reason, and I know these facts from Mr. Gunter's own statements.

Ans. to X 23. I did not have any conversation with E. A. Carlton in which any such language was used. E. A. Carlton applied to me for employment under my position as assignee, & I told him I thought I would make the bond, & if I did I would, if possible, give him employment. Nothing was said as to Mr. Gunter. I could not possibly have known anything as to Mr. Gunter's future.

Ans. to X 24. They were sold by the different salesmen; I cannot say in what quantities or by whom they were opened; I know that no whole or unbroken tierce was sold.

Ans. to X 25. I know that S. H. Gunter bought a tierce of hams about this time from Estes, Doan & Co.; I do not know of my own knowledge that the date is exactly correct; I do not know from my own recollection that the tierce of hams bought about this date was the last tierce bought of Estes, Doan & Co.

112 Ans. to X 26. I have no knowledge of any such fact.

Ans. to X 27. He had none that I have any knowledge of. Wm. Dugger owed Mr. Gunter a large account for supplies, made through the instrumentality of W. A. Dugger.

Ans. to X 28. W. A. Dugger was a clerk with S. H. Gunter, on a salary optional with Mr. Gunter as to amount, & he received an order for $100.00 on his father, Wm. Dugger, in payment of balance due him, I think, on the 25 day [of] March, 1882.

Ans. to X 29. I don't know of but one, & that was put in the assignment & was afterwards purchased, as I understand, from recei-ver

by Mrs. F. A. Gunter. It is now in possession of Mrs. Gunter in Sardis.

Ans. to X 30. We have paid $2,000.00 of the debt—$500.00 on 4th day of Nov., 1882; $500.00 on the 4th day of December, 1882, & $1,000.00 on the 4th day Jan'y, 1883. The balance is still due & unpaid. It was paid in cash by myself out of the proceeds of goods sold in the business of Gunter & Spain.

Ans. to X 31. To the best of my knowledge and belief, all or the larger part of the cotton shipped by S. H. Gunter for 2 months prior to his assignment was shipped to Estes, Doan & Co. I am satisfied he did not ship any to Bickham & Moore.

Ans. to X 32. I do not know how much.

Ans. to X 33. Bickham & Moore bought or sold for S. H. Gunter's account 100 bales futures, & the loss on that amount was about $800.00, which was charged to his account. This cotton was bought by order of S. H. Gunter.

Ans. to X 34. To the best of my knowledge & belief, they were correctly kept and showed the condition of his business.
113 I am not a scientific book-keeper, & there may be technical errors, but so far as my knowledge goes they are correct.

Ans. to X 34. I did not refuse to open the safe nor did Mr. Gunter refuse to open the safe. I opened the safe for the deputy to take an inventory of the books, and offered to have it open in his *possession* & gave him the keys to the vault, but under advice from my attorneys I declined to give them the combination. My attorneys were Mess. Hall & Boothe.

Re-examined:

Int. In your answer to direct interrogatory No. 7 you make a statement about your solvency, and in your reply to cross-interrogatory 8 & 10 you state that you had only $350.00 in money & your claim against S. H. Gunter for $550.00, and that you owed Wm. R. Moore & Co. about $1,200. Now, explain fully how you were solvent under these circumstances.

Ans. I owed Wm. R. Moore & Co. originally about $1,200.00, but settled with them at $400.00, all payable at future dates, giving four new notes for this amount. The real estate owned by my wife I considered a part of my assets, as the same was always available for that purpose, either as collateral or by sale of the same. I made this compromise with Wm. R. Moore & Co. after the assignment and before going into business with Mrs. Gunter. Further deponent saith not.

S. G. SPAIN.

Sworn to & subscribed before me Sept. 24, 1882.

J. B. BOOTHE,
U. S. Commissioner.

The following is Exhibit "A" to the foregoing deposition, to wit:

114 Ex. A to Dep. of Spain.

MEMPHIS, TENN., *Feb'y* 8, 1882.

S. H. Gunter, Sardis, Miss., bought of Estes, Doane & Co.—

1 t-re. Whittaker hams [at] 384.28, 356.13	46 28
Dray	25
	46 53

Duplicate.

Deposition of S. H. Gunter.

S. H. GUNTER, being duly sworn, deposes as follows:

Int. 1. State your name, residence, and occupation, and whether you know the parties to this suit.

Ans. S. H. Gunter; Sardis, Miss.; clerk for Gunter & Spain. I do know the parties to this suit.

Int. 2. Did you or not make an assignment for the benefit of your creditors on the 25th of March, 1882?

Ans. I did.

Int. 3. State whether or not at the time of said assignment you were indebted to Estes, Doan & Co., of Memphis, Tenn.; and, if so, to about what amount.

Ans. I was; the amount I think was about thirteen thousand dollars; could not tell the exact amount, as I have cotton on hand unsold.

Int. 4. If, in said assignment, you preferred any of your creditors state why you made such preference.

Ans. My reason for preferring Estes, Doan & Co. was on account of the short time I had done business with them & the large cash advance made for me, having paid seven thousand dollars for me in two drafts to Dillard & Coffin & Co., & to the assignee of Cary & Richardson, besides other cash advances. My ac. with B. Lowenstein, Hill & Standish, R. A. Patterson & Co. — I have traded with them only a very short time and they did not have the benefit of my trade for a term of years like others.

115 Int. 5. In making said assignment state whither or not you fairly and fully conveyed your property, subject to execution, for the benefit of your creditors. Did you attempt or do any act in connection with said assignment or in contemplation thereof for the purpose of defrauding your creditors in any way whatever?

Ans. I did. I did not do anything but transfer all the property that I have, *that I have*, both personal and real, except my homestead & exempt property.

Int. 6. What is the size of your family?

Ans. Wife and eight children.

Int. 7. From what source did you support your family?

Ans. From my store.

Int. 8. State whither or not for some [time] prior to your assignment you had any other source of support except your merchantile business. If so, what?

Ans. I have none, except from the store.

Int. 9. Witness E. A. Carlton states that just before the assignment a ti-rce of hams was received at the store & you told him not to open it, & the tierce afterwards disappeared; state the facts about this matter.

Ans. The last tierce of hams I received before I made an assignment was purchased of Estes, Doan & Co. Feb'y the 8. I never told E. A. Carlton not to open the tierce; the tierce was oppened & all sold out. I had six of them sent down to my homestead. E. A. Carlton send some of the same hams to his boarding-house.

Int. 10. Witness E. A. Carlton also states that just a few days before your assignment two or three barrels of sugar, a sack or two of coffee, twenty gallons of cottón-seed oil, &c., were loaded on a dray and sent to your house. What are the facts about this?

116 Ans. It is not so. I sent down supplies in the usual way. My family do not use cotton-seed oil.

Int. 11. Do you know anything about dress goods, trimmings, &c., being missed or taken from the store shortly before the assignment, or of goods missing from the center counter? If so, state the facts fully.

Ans. I do not know of any dress goods or trimmings being missed from the store, only as the stock was reduced by the sales, and do not think they could have been taken out without me detecting it. I never missed any goods from the center counter.

Int. 12. Witness E. A. Carlton has stated that on several occasions, just before the assignment, Mrs. Gunter took money from the cash drawer. Do you know anything about this matter? If so, state it.

Ans. I know that she never took any money from the cash drawer but what was properly accounted for & charged up. It was a custom in the store to pay out small amounts from the drawers & put it in cash tickets or report it to the office to be charged.

Int. 13. Witness Wm. Dugger states that about the time of the assignment you took a good many goods from the store to your house; state the facts about this & whether you sent home anything except family supplies and in the quantities usual with you.

Ans. I only sent down supplies in the usual way and nothing but family supplies.

Int. 14. Do you know anything about the sale of a lot of hats to the firm of which witness Walter Carlton is a member? If so, state the facts.

[A.] I know nothing about it; never heard of it until a short time ago.

117 Int. 15. Did you ever trade with defendants, J. F. Frank & Co.; if so, for how long, and were your purchases & cotton shipments to him annually large or small?

Ans. I traded with J. F. Frank & Co. for about twelve or thirteen years; gave them my entire trade during that time and shipped all my cotton to them except some small shipments.

Int. 16. How long did you trade or do business with Joyner, Lemmon & Gale, Hill & Mitchell, & Bickham & Moore?

Ans. I did business with Joyner, Lemmon & Gale about eight years; I did business with Hill, Terry & Mitchell & their successors from 1872 until I made an assignment in 1882. I commenced shipping cotton to Bickham & Moore in 1878. I think I shipped them seven or eight hundred bales that season; shipped them some cotton each since up to 1882; I cannot say the exact amount without referring to my old cotton book. They had about two hundred bales of cotton on hand when I made an assignment.

Gunter—Cross-Interrogatories.

X Int. 1. You were present during the taking of S. G. Spain's testimony of yesterday, were you?

X Int. 2. Have you read the bill & papers in this cause or any of them?

X Int. 3. You were present when E. A. Carlton's deposition was taken in this cause, were you, & you have heard the depositions of E. A. Carlton & W. A. Dugger read, have you not?

X Int. 4. Ed. Carlton was not present during the taking of S. G. Spain's deposition, was he? Who were present?

X Int. 5. How much money did you have on hand on the day of your assignment, and where was it & what became of it?

118 X Int. 6. Is that all you had on hand or in your possession or control during the day & night of 25 March, 1882, & how much did your wife have at that time?

X Int. 7. Was there a thousand dollars or near that sum in a wardrobe at your house at that time of the assignment?

X Int. 8. How much money was there at your house at the time of your assignment?

X Int. 9. How much money was there in possession of your family at the time of your assignment?

X Int. 11. Now state fully where your wife got the said $900—where, how, why, and all about it.

X Int. 12. Tell, please, exactly when you paid your wife this money & where you got it from to pay her with, and how was the debt evidenced—by note, open account, or how—and when did you become so indebted to her & in what sum; tell all about it.

X Int. 13. Do your books of account show this indebtedness & this payment to your wife?

X Int. 14. Did S. G. Spain know about your owing your wife? Did he know about your paying her?

X Int. 15. Did Hill & Mitchell or J. F. Frank or Bickham & Moore or any of your creditors know of your owing your wife or of your paying her? Did you ever so inform any of them?

X Int. 16. Why did you not pay your wife the whole $950 which you say you owed her? You had enough to pay her with, didn't you?

X Int. 17. What has she done with the $900 you paid her?

X Int. 18. Did you buy any goods or receive any shipments of goods after you paid your wife this $900; if so, from whom?

X Int. 19. When did you conclude first to make an assignment?

119 X Int. 20. Did you ever disclose your financial condition to Bickham & Moore, or to Lemmon & Gale, or to Hill & Mitchell, or to J. F. Frank; if so, when, & where, & to whom?

X Int. 21. How much money did you collect or take in during the ten days preceding the assignment which is not mentioned in your books of account?

X Int. 22. How did you carry on business during that last 10 days; as usual, or how? Did you sell for cash or credit?

X Int. 23. What other property besides the $900 did your wife have at the time of the assignment; its value?

X Int. 24. What became of the bill of goods bought of B. Lowenstein & Bro., for which you preferred them?

X Int. 25. Did you not undertake to explain to J. F. Frank your reason for preferring Lowenstein & Bro., and give as such reason that the debt was for goods that your wife got & that did not go into your store, or some such explanation, or what did you write to him or explain to him?

X Int. 26. Did you make such explanation to C. S. Cook verbally? Did you write any letter to C. S. Cook on the subject?

X Int. 27. You preferred B. Lowenstein & Bros. for all you owed them, did you not?

X Int. 28. And such of your other creditors as you preferred are preferred for all you owed them, except Estes, Doan & Co., did you not?

X Int. 29. Why did you not prefer Estes, Doan & Co. for more than $10,000?

X Int. 30. Is it not a fact that as cotton of yours in their hands was unsold, and interest uncalculated, you guessed at what you owed them, and guessed it at $10,000?

X Int. 31. Have you investigated to see what you did really owe Estes, Doan & Co. at time of the assignment, and do you know of your own personal knowledge & investigation that you owed

120 them $10,000 on 25 March, 1882, or how much you did owe them then?

X Int. 32. How much interest has Estes, Doan & Co. charged you, and what rate per cent.? How much of their debt is for cotton futures?

X Int. 33. When you said that you owed Estes, Doan & Co. about $13,000 you were merely judging from the statement of account without your examining it carefully, were you not?

X Int. 34. Is it not a fact that all you know as to the correctness of the account of the Estes, Doan & Co. debt is from what information you got from your book-keeper?

X Int. 35. When was the sign of S. H. Gunter changed on the store-house in which you were at time of assignment?

X Int. 36. Who were in the store as assigned clerk after assignment, & at date of attachment?

X Int. 37. How many horses, & how many mules, & how many mares, & how many oxen did you have time of assignment, & what became of them?

X Int. 38. Is it not a fact that you shipped a horse to Memphis on 27 March, '82? Please state whose horse it was, and all about it.

X Int. 39. What lawyer or lawyers prepared your deed of assignment, & who prepared the trust deed from you to J. G. Hall, dated 25 March, 1882, when prepared, and who delivered said papers to the clerk for record?

X Int. 40. For what do you owe Bickham & Moore? Is it not for cash advanced & commissions?

X Int. 41. Please explain how you owe them for losses on cotton, and do you owe them for losses on cotton?

X Int. 42. You simply mean to say, do you not, that all you owe Bickham & Moore for is for cash advanced & for commissions,
121 and that you have lost the difference between what some of the cotton cost and what they sold it for, and you mean to say that this is the cause, to some extent, of your falling behind with them; but you don't mean that they charged you with this loss.

[X] Int. 43. Is it not a fact that Bickham & Moore have not sold you any goods, and have only been trading with you since 1878, and have charged you with nothing but cash paid to you & for you & for commissions interest?

X Int. 44. What do you know about the correctness, or otherwise, of the charges in the Estes, Doan & Co.'s claims against you of $279.78 paid Turner & Co. April 29, '82?

X Int. 45. Is it not a fact that you have been trading about some length of time with Estes, Doan & Co. or with Bickham & Moore, & that they have sold you goods largely, & charged you for cotton commissions & for cash advanced also?

X Int. 46. Did you authorize Estes, Doan & Co. to hold up your cotton & not finish selling it until June, 1882; or were they disobeying your instructions in doing that?

X Int. 47. How & when did you settle with W. A. Dugger? Did you give him the claims as collateral security or in full & final payment? Did you pay him $20 after giving him the $100 draft?

X Int. 48. Is it not a fact that you paid Estes, Doan & Co. money you got from Bickham & Moore or drafts on Bickham & Moore, but that you did not pay Bickham & Moore with any money or drafts you got from Estes, Doan & Co.?

Ans. to Cross-Interrogatories.

Ans. to X 1. I was.

Ans. to X 2. I have not.

122 Ans. to X 3. I heard Mr. E. A. Carlton gave, in his testimony, and heard the testimony of Mr. W. A. Dugger & W. C. Carlton read.

Ans. to X 4. He was not. Capt. R. H. Tayler, Judge J. G. Hall, J. C. Kyle, J. B. Boothe, Col. H. M. Sullivan, S. H. Gunter.

Ans. to X 5. I have about eighty dollars in money on hand. It was left in the safe.

Ans. to X 6. It was all I had on hand or under my control. She had about nine hundred dollars.

Ans. to X 7. There was not a dollar in the wardrobe at my house.

Ans. to X 8. There was not any except the nine hundred dollars of my wife's.

Ans. to X 9. There was nine hundred dollars, & it belonged to my wife. I paid it to her to pay a debt of borrowed money.

Ans. to X 11. I paid this money to my wife under the advice of my attorneys, Tayler & Hall. I paid it to her a short time before I made an assignment at the store. It was a debt due her for borrowed money given to her by her grandfather, Payton King, of Tuskegee, Ala.

Ans. to X 12. It was paid a short time before the assignment, and was paid with money out of my business. The debt was for borrowed money on open account. I became indebted to my wife in 1858. My indebtedness to my wife was nine hundred & fifty dollars. I refer you to the records of Hernando, Miss., and Tuskegee, Ala., to show the amount of money I received belonging to my wife.

Ans. to X 13. They do not show the indebtedness. I don't — whether they show the payment to wife or not.

Ans. to X 14. I do not remember whether I did or not. I think he does know.

Ans. to X 15. I do not know whether they did or not. I did not tell them.

123 Ans. X 16. I wanted to pay as many of my debts as I could; did not have the money to pay them all with; she was satisfied with that amount. I had enough to have paid my wife, but paid other debts with it.

Ans. X 17. She has paid it out for family expenses.

Ans. X 18. I did not receive any goods or buy any goods after I paid my wife.

Ans. X 19. About a week or ten days before the 25 March, 1882.

Ans. X 20. J. F. Frank & Co., Hill & Mitchell, & Lemmon & Gale knew all about my financial condition & we frequently talked about it. I never made any statements to Bickham & Moore.

[Ans. X] 21. I do not know or recollect of any; I suppose the books will show.

Ans. X 22. As usual; mostly for cash; sold some goods on a credit.

Ans. X 23. She did not have any, except some furniture—some that her mother gave her and some that she bought with her money. I do not know the value.

Ans. X 24. They were sold in the usual way in the store.

Ans. X 25. I never wrote J. F. Frank anything, to the best of my recollection.

Ans. X 26. I have no recollection of making any such statement; I did not.

Ans. X 27. I think I did; do not remember the exact amount.

Ans. X 28. I did.

Ans. X 29. I thought at the time there would be more than enough to pay the preferred debts, so the balance would go to the other creditors.

Ans. X 30. I did not; I estimated my indebtedness with them about thirteen thousand dollars.

Ans. X 31. I owed Estes, Doan & Co. at the time of my
124 assignment about thirteen thousand dollars. I only know from my books & their statements.

Ans. X 32. I think the charges were 8 per cent.; do not remember what rate. I do not know how much interest Estes, Doan & Co. charged me; could not tell without referring to statement. I do not know how much; cannot tell without referring to books & statements.

Ans. X 33. I only know from my books & their statements.

Ans. X 34. It is not a fact.

Ans. X 35. I never had any sign & never any changed.

Ans. X 36. S. G. Spain was assignee. I do not know that he had any clerks.

Ans. X 37. I have one horse in my possession, one horse at Mr. E. A. Carlton's, one horse at Mr. R. B. McKee's; no mules, mares, or oxen; the horse that E. A. Carlton had was reported to me dead, and all three horses were put in the assignment. Mr. Balentine owns one & my wife owns one; they bought them from Mr. Lavender, the receiver.

Ans. X 38. It is true. It was a black mare belonging to J. F. Frank & Co. that I sold for them on a credit & had to take it back.

Ans. X 39. Capt. R. H. Taylor & Judge J. G. Hall prepared the assignment for me. I do not remember who wrote the trust deed. They were prepared the 25 of March, 1882. I do not remember who delivered the papers.

Ans. X 40. It is for cash & commissions and losses on cotton in their hands.

Ans. X 41. There is a portion of this debt that accrued by Bickham & Moore selling my cotton against instructions. I do not know how to answer the questions more fully than I have.

Ans. X 42. I do not understand that Bickham & Moore charged me with any losses on cotton, but my indebtedness was in-
125 creased by their selling my cotton against instructions.

Ans. X 43. It is true.

Ans. X 44. Estes, Doan & Co. were carrying futures for me, but do not know anything about the payments.

Ans. X 45. I have not been trading or doing business with Estes, Doan & Co. as long as I have with Bickham & Moore; for two seasons prior to my assignment I did business with them, and shipped them the most of my cotton; they charged commission on cotton, interest on money advanced, & I bought all of my groceries & plantation supplies from them during that time.

Ans. X 46. I gave no instructions in regard to selling my cotton.

Ans. X 47. Mr. W. A. Dugger was not working with me upon any fixed salary; I never contracted with him, but with his brother, A. D. Duggar, and the understanding was to pay him whatever I saw

proper to. I paid or settled with him on the evening of the 25th of March, 1882; I gave him a sight draft on his father, Wm. Dugger, his account, & twenty dollars in money, in full settlement with him; gave it all to him at the same time.

Ans. X 48. That is not a fact. I never paid Estes, Doan & Co. with any money drawn from Bickham & Moore, or paid Bickham & Moore any money drawn from Estes, Doan & Co.

Re-examined:

Int. 1. You have stated that you paid your wife a debt just before your assignment. Now, state whether or not you paid other debts just prior to or about the time of the assignment?

Ans. I did. I paid J. F. Lavender between $450 & $500, and I paid H. Walter & Co., I think, between three & four hun-
126 dred dollars, & some other debts I do not now remember. I paid out money on my debts as fast as I got it; I cannot fix definitely the dates of these payments; think it was within two weeks of the assignment. I paid Walter & Lavender in full.

Int. 2. About how much, if any, of the debt due by you to Bickham & Moore was for cotton futures?

Ans. I don't know; some seven or eight hundred dollars; they bought the futures at my request.

Int. 3. What was your wife's name before her marriage to you?

Ans. Florence A. King.

Int. 4. State whether or not E. A. Carlton has been present during the taking of your testimony.

Ans. He has been present a part of the time.

Re-X examination:

Int. What did you estimate the stock of goods included in your assignment to be worth?

Ans. At about $12,000.00; no invoice had then been taken.

S. H. GUNTER.

Sworn to and subscribed before me September 25, 1883.

J. B. BOOTHE.
U. S. Commissioner, &c.

The following paper or agreement is among the files in this cause, to wit:

Agreement.

In the District Court of the United States for the Western Division of the Northern Dist. of Miss.

ESTES, DOAN & CO. *vs.* S. G. SPAIN *et al.*

It is agreed in this case that on the same afternoon of the execution of the assignment, & just before its execution, S. H. Gunter executed a deed of trust to J. G. Hall, conveying a certain real
127 estate & an unexpired lease on store-house on grounds of Miss & Tenn. R. R. Co., in the town of Sardis, Miss., to secure

certain indebtedness therein mentioned; that said trust deed was filed for record only a few minutes before said assignment; that the store-house was unoccupied until Gunter & Spain went into business, when it was used by them *by* as a warehouse until Feb'y 27, 1883, they paying rent after the maturity of debt accrued to benefactors; that on Feb'y 27, A. D. 1883, all the property was sold by J. B. McGehee as substituted trustee in said trust deed; that said unexpired lease on store-house was purchased by J. B. Boothe & J. H. Rice at trustee's sale, said J. B. Boothe being one of the parties surety for S. H. Gunter mentioned in said trust deed; that the sureties mentioned in said trust deed as being S. H Gunter's sureties on his debt to the Bank of Sardis have paid off & discharged said indebtedness to the Bank of Sardis before said sale, and that the proceeds of said sale reimbursed them in part for the money so paid on said indebtedness to said Bank of Sardis; that said McGehee, as such substituted trustee, executed & delivered on 27 Feb'y, 1883, deeds conveying to the purchaser all the property conveyed in said trust deed, which said trust — by copy is herewith filed as a part hereof.

HALL & BOOTHE,
TAYLER & KYLE,
Of Counsel for Compl'ts.

Deed of Trust.

This indenture, made and entered into this 25th day of March, 1882, between S. H. Gunter, of the county of Panola and State of Mississippi, of the first part, and J. B. Boothe, J. H. Rice, & W. L. Carlton, of the county of Panola and State of Mississippi, of the second part, witnesseth: That whereas said party of the first
128 part being indebted to the Bank of Sardis in the sum of one thousand dollars, evidenced by note due December 1st, 1882, with interest after maturity at the rate of twelve per centum per annum, with said parties of the second part as sureties thereon, and said party of the first part desiring to secure his said sureties against the payment of said note, and desiring further to secure the prompt payment of the same when due; Therefore, in consideration of the premises and the sum of one dollar to the party of the first part paid by J. G. Hall, who is hereby constituted trustee herein, the receipt of which — hereby acknowledge, the party of the first part has this day granted, bargained, and sold, and by these presents does give, grant, bargain, sell, and convey, to the said teustee and all his successors the following-described property located in the county of Panola and State of Mississippi, viz: A lot of ground in the town of Sardis, in the county of Panola, being in section thirty-four (34), in township seven (7), of range seven (7) west, and known on the map or plat of said town as lot two (2), block four (4), on the west side of Main street, and being all of the lot conveyed to said S. H. Gunter by John C. Harrison, commissioner, by deed of record in the chancery clerk's office, 1st district of said county, in Book R, pages 322 & 323, less that portion of said lots sold and conveyed by S. H. Gunter to D. R. Wall; also the west portion of

lot number five (5), block number thirty-two (32), in Juniata reservation, town of Sardis, of said county, and bounded as follows, to wit: Commencing at the northwest corner of said lots and running thence east with the line of said lot two
129 hundred (200) feet; thence south parallel with the railroad to the southern boundary line of said lot; thence west with said southern boundary line to the southwest corner thereof; thence north with the western boundary line of said lot to the place of beginning, and being the lot conveyed to said S. H. Gunter by deed from W. T. McCracken and of record in the chancery clerk's office, 1st district of said county, in Book H, page 304; also one store-house on grounds of the Mississippi & Tennessee Railroad Company in said town of Sardis, Miss., with the unexpired lease on same.

And the party of the first part covenant and agree to warrant and forever defend the title to said property, with its appurtenances, to the said trustee and his successors, subject, however, to the following limitations and conditions, to wit: Should the party of the first part promptly pay the above-stated indebtedness on or before the 1st day of December, 1882, then this instrument to be void, but in default thereof the said trustee, at the written request of the party of the second part, or their legal representatives or assigns, shall take possession of said property, and, after giving notice of time, place, and terms of sale by advertisement posted at least ten days before the day of sale in three public places in Panola county, shall sell the same at public auction to the highest bidder, for cash, at such time and place as he shall designate in said advertisement, and shall execute a written conveyance of the same to the purchaser or purchasers. The proceeds of said sale shall be applied to the payment of said indebtedness and all costs incurred herein, and if there be a surplus such surplus shall be returned to the party of the first part. If said property shall at any time become endan-
130 gered as a security for said indebtedness the trustee may take the same into his possession and hold or control the same until said debt and all costs are liquidated by payment thereof or by sale of said property, but until demanded by the trustee said party of the first part shall hold the same subject to this deed of trust. In case of the failure or inability on the part of said trustee to execute the trust herein confided the party of the second part can at any time appoint a trustee to act in his stead, which appointment shall be written on this instrument, and shall vest in such succeeding trustee all the title and powers herein conferred on his predecessor.

In testimony whereof the party of the first part has hereto set his hand and seal the date first above written.

S. H. GUNTER. [SEAL.]

THE STATE OF MISSISSIPPI, *Panola County:*

Before me, S. R. Blann, clerk of the chancery court of said county, this day personally appeared the above-named S. H. Gunter, who acknowledged that he signed, sealed, and delivered the foregoing

deed of trust, on the day and year therein mentioned, as his voluntary act and deed.

Given under my hand and seal of said court, at office in Sardis, this 25th day of March, 1882.

S. R. BLANN, *Clerk*,
By W. W. SMITH, *D. C.*

(Endorsed:) S. H. Gunter to J. B. Boothe *et al.* Deed of trust. The State of Mississippi, Panola county. Chancery court. I certify that this deed of trust was filed for record at 11.30 o'clock p. m. on the 25th day of March, 1882, and duly recorded the 29th day of March, 1882, on page 54, book 24, of the records of deeds of trust in my office.

S. R. BLANN, *Clerk.*

THE STATE OF MISSISSIPPI, *Panola County:*

131 I, S. R. Blann, clerk of the chancery court of said county, do hereby certify that the foregoing is a true and correct transcript of deed of trust given by S. H. Gunter to J. B. Boothe *et al.*, as the same appears of record in my office in book 24, page 54.

Given under my hand and the seal of said court this July 20th, 1883.

S. L. BLANN, *Clk.*
By W. W. SMITH, *D. C.*

The following agreement is among the papers in this cause:

Agreement.

In the District Court of the United States for the Northern District, Western Division, of Mississippi.

ESTES, DOAN & CO.)
vs.) 283.
S. G. SPAIN *et al.*)

It is agreed by counsel in the above-stated cause that the time of complainants for taking testimony may be extended to the 20th day of September, 1883, and that counsel for certain attaching creditors will not require formal notice of the time and place of taking such testimony, but to be mutually agreed upon Aug. 14, 1883.

HALL & BOOTHE,
TAYLOR & KYLE,
Sol's for Complainants.
SULLIVAN & SULLIVAN,
Of Counsel for Def't.

The receiver herein has never made and filed in this case a report, but he has at different times paid into court funds belonging to

estate, & the following is a statement of the amounts that have been so paid in, & also such as may have been paid out, to wit:

132 *Account with Receiver.*

1882, July	10.	Paid into court by receiver		3,957 84
" Dec.	4.	" " "		125 00
1883, Jan'y	4.	" " "		100 00
" Feb'y	5.	" " "		100 00
" Mar.	5.	" " "		50 00
" May	3.	" " "		50 00
" June	5.	" " "		35 00
" Oct.	11.	" out of court to Estes, Doan & Co.		4,000 00
" Dec.	7.	" into court by rece-ver		25 00
1884, Jan'y	4.	" " "		50 00
" Feb'y	5.	" " "		25 00
" July	2.	" " "		13 00

And, to wit, on the 11th Oct., 1883, a bond was given by Estes, Doan & Co. for said $4,000, paid *paid* to them, filed, & approved, in the words & figures following, to wit:

Bond of E., D. & Co. for Money Withdrawn.

In the United States District Court for the Western Division of the Northern District of Mississippi.

ESTES, DOAN & CO., Complainants,
vs.
S. G. SEAIN *et al.*, Defendants.

Whereas in the above-styled suit now pending in the above-named court the court has entered an order or decree allowing the complainants therein to receive all the moneys which have been paid into said court in said cause, less a reasonable sum to cover costs, upon complainants executing a good and sufficient bond, and delivering the same to the clerk of said court, and to be approved by said clerk, conditioned to refund all the moneys so received
133 by said complainants to said clerk upon the order of said court upon such reasonable short notice as said court may designate:

Now, therefore, we, the said Estes, Doan & Co., principals herein, and Thomas F. Caldwell, sureties, hereby acknowledge ourselves held & firmly bound unto the United States of America in the penal sum of six thousand dollars ($6,000.00), for the payment of which we, and each of us, acknowledge ourselves to be jointly and severally bound, to be void if the principals herein shall, upon the order of the United States district court for the northern district of Mississippi and for the western division of said northern district, refuse to pay over to Geo. R. Hill, clerk of said court, or his successor in office, the sum of four thousand dollars, the same being the amount this day received from him by said plaintiffs in the suit above described.

Witness our signatures this 8 day of Oct., A. D. 1883.

ESTES, DOAN & CO.,
By J. H. DOAN.
J. F. CALDWELL.

STATE OF TENNESSEE, *City of Memphis:*

COMMISSIONER'S OFFICE.

I, Hunsdon Cary, a commissioner of the State of Mississippi, duly appointed by the Gove-nor thereof, for the State of Tennessee, to reside in the city of Memphis, and take the acknowledgments and proofs of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions, etc., to be used or recorded in said State of Mississippi, do certify that on this day personally appeared before me the within-named Estes,
134 Doan & Co., by J. H. Doan, one of the members of said firm, who acknowledged that they signed and delivered the foregoing bond on the day and year therein mentioned as their act and deed.

Given under my hand and official seal, at Memphis aforesaid, this the 8 day of October, 1883.

[L. S.] HUNSDON CARY,
Commissioner.

STATE OF MISSISSIPPI, *Panola County:*

Before me, J. M. Cox, an acting justice of the peace of said county, this day personally appeared T. F. Caldwell, who acknowledged he signed and delivered the foregoing bond on the day and year therein mentioned, as his voluntary act and deed.

Given under my signature this Oct. 9th, 1883.

J. M. COX, *J. P.*

"Filed & approved Oct. 11, 1883.

G. R. HILL, *Clerk.*"

And afterwards, to wit, on the 25th day of Jan'y, 1884, the same being a day of the December term of said court, A. D. 1883, the following order was made in said cause, to wit:

Order Dismissing as to Certain Parties.

ESTES, DOAN & CO.)
v.) 283. In Equity.
S. G. SPAIN *et al.*)

Be it remembered that this day came complainants, by their solicitors, and moved the court for leave to dismiss their bill as to the defendants, J. F. Frank, surviving partner of J. F. Frank
135 & Co.; H. T. Lemmon, and Tom Gale, surviving partners of the firm of Joyner, Lemmon & Gale; Hill & Mitchell, Oliver Finnie & Co., S. C. Toof & Co., Weller, Langstaff & Co., Wells & Moffatt, Wells & Wildberger, Ames, Beattie & Co., W. N. Wilkinson, Freedman Brothers, Brown & Jones, B. Lowenstein & Brothers, Wat-

horne & Co., Hill, Standish & Co., and Graham, Cousins & Co., all residents of the State of Tennessee, and the court having duly considered said motion, and being fully advised in relation thereto, doth order, adjudge, & decree that the same be sustained, & complainants' bill is hereby dismissed as to all the defendants in this order named, and this cause s-all proceed accordingly.

And afterwards, to wit, on the same day and term, the following further order was made in the said cause by this circuit court:

Decree pro Confesso v. S. G. Spain.

ESTES, DOAN & CO. v. S. G. SPAIN *et al.* } 283. In Equity.

In this cause it appearing that process for S. G. Spain, one of the defendants in this cause, has been legally issued, executed, & delivered into court, and that said defendant has failed to appear and plead, answer or demur to complainants' bill, as required by law and the order of this court; upon motion of complainants the said bill is taken as confessed by the said defendant, and this cause may proceed to hearing without further proof as to him.

136 And afterwards, to wit, on the 3d day of March, 1884, the same being a day of the adjourned term of the December term of said court, A. D. 1883, the following "final decree" was made in said cause, to wit:

Final Decree.

In the District Court of the United States for the Northern District of Mississippi, Western Division.

ESTES, DOAN & CO. *v.* S. G. SPAIN *et al.*

This cause having been submitted on a former day upon bill, answer, exhibits, & proofs, and the court having duly considered the matters and things therein contained, and being satisfied that complainants are not entitled to the relief sought under their bill, it is therefore considered by the court, and so ordered, adjudged, and decreed, that the injunction heretofore granted be, and the same is hereby, dissolved. It is further ordered that complainants pay all costs in this behalf expended, for which execution is awarded.

March 3d, 1884.

R. H. HILL, *Judge.*

Bill of Cost.

Statement of the costs:

Clerk's costs on general case	$81 10
Marshal's costs	5 50
Attorneys' tax fees	40 00
Deposition fees	19 35
Cost of preparing record for Supreme Court	46 85
Total	$192 80

137 And afterwards, to wit, on the 4th day of April, A. D. 1884, thes ame being a day of said last-mention- adjourned term of said Dec. term, 1883, the following further order was made in said court, to wit:

Order to Grant Rehearing.

ESTES, DOAN & CO.
v.
S. G. SPAIN, Assignee. } 283.

In this cause it is ordered by the court that the complainants have leave of thirty days from this date within which to file their petition for a rehearing, &c.

And afterwards, to wit, on the 23d day of July, 1884, the same being a day of the June term of said court, A. D. 1884, the following order was made by the court, to wit:

Order to Refund Money.

BICKHAM & MOORE
v.
S. H. GUNTER, Def't; ESTES, DOAN & CO., Claimants. } 3579.

HILL & MITCHELL
v.
S. H. GUNTER, Def't; ESTES, DOAN & CO., Claimants. } 3581.

LEMMON & GALE
v.
S. H. GUNTER, Def't; ESTES, DOAN & CO., Claimants. } 3582.

J. F. FRANK & CO. [and] SUN & CO.
vs.
S. H. GUNTER, Def't; ESTES, DOAN & CO., Claimants. } 3583.

138 In all these cases the claimants, Estes, Doan & Co., having been heretofore allowed by the order of this court to take the proceeds of the sale of the property levied on in these causes (being $4,000) out of this court upon said claimants entering into bond with T. F. Caldwell, as their sureties, conditioned for the return of said money into this court, whenever ordered so to do, to abide the orders thereof, it is now therefore ordered that said Estes, Doan & Co. and their sureties, T. F. Caldwell, do return said money and the interest at 6 per cent thereon from the time they took said money until they return the same, and pay over the same to the clerk of this court within thirty days from this date, or show cause why they do not so return the same, and in default thereof that execution issue against said Estes, Doan & Co. and the sureties on their said bond, to-wit, T. F. Caldwell.

Ordered this 23 July, 1884.

And afterwards, to wit, on the 29th day of July, 1884, the said complainants filed their supersedeas bond herein, which is in the words & figures following, to wit:

Supersedeas Bond.

Supreme Court of the United States.

Know all men by these presents that we, Z. N. Estes and J. H. Doan, principals, and N. R. Sledge, are held & firmly bound unto S. H. Gunter, Bickham & Moore, *et al.* in the sum of six thousand dollars, to be paid to the said Gunter, Bickham & Moore, *et al.*, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally,
139 and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the — day of July, 1884.

Whereas the above-named Z. N. Estes & J. H. Doan have prosecuted an appeal to the Supreme Court of the United States to reverse the decree in this cause of Estes, Doan & Co. *vs.* S. H. Gunter *et al.* by the district court of the United States for the northern district of Mississippi:

Now, therefore, the consideration of this obligation is such that if the above-named Z. N. Estes and J. H. Doan shall prosecute their said appeal to effect and answer all costs and abide by and perform the decree of said Supreme Court and of said district court thereon, then this obligation shall be void; otherwise to remain in full force and virtue.

Z. N. ESTES. [SEAL.]
J. H. DOAN. [SEAL.]
N. R. SLEDGE. [SEAL.]

STATE OF TENNESSEE, *Shelby County:*

Personally appeared before me Hunsdon Cary, a notary public in and for said State and county, at Memphis, duly commissioned and qualified, Z. N. Estes and J. H. Doan, the within-named bargainers, with whom I am personally acquainted, and who acknowledged that they executed the within bond for the purposes therein contained.

Witness my hand and notarial seal, at Memphis, this 26 day of July, 1884.

[L. S.] HUNSDON CARY,
Notary Public.

140 STATE OF MISSISSIPPI, *Panola County:*

Before me, J. Heath, N. P. of Como, of said county, this day personally appeared the above-named N. R. Sledge, personally known to me, who acknowledged that he signed and delivered the foregoing bond on *on* the day and year therein mentioned, as his voluntary act and deed.

Given under my hand and seal of office, at office in Como, Miss., this 28th day of July, 1884.

[L. S.] J. E. HEATH, *N. P.*

I approve the foregoing bond and surety, to operate as a supersedeas, but not to release the complainants upon their liability upon their refunding bond heretofore given.

This July 29, 1884.

R. H. HILL, *Judge.*

Filed July 29, 1884.

G. R. HILL, *Clerk.*

And, to wit, on said 29th day July, 1884, the same being a day of the June term of said court, A. D. 1884, the following decree granting appeal, &c., was made in the following words and figures, to wit:

Decree Granting Appeal, &c.

ESTES, DOAN & CO. *vs.* S. G. SPAIN *et al.*

In the above-stated cause the complainants having applied in open court for an appeal to the Supreme Court of the United States from the decree heretofore rendered in this cause dismissing their bill of complaint, and they having entered into bond, with N. R. Sledge as surety, in the penal sum of six thousand dollars, payable and conditioned as required by law and the rules of the Supreme Court, which has been approved by the court, to operate as a super-
141 sedeas as against the defendant in this cause—

It is ordered that said appeal be granted. It is further ordered that the decree rendered in this cause on the 23d day of July, 1884, be suspended until the further order and decree of this court, but not to operate as a release of the surety or sureties to the bond executed by complainants, stipulating for the return of the money by complainants, recited in said order.

Ordered this July 29, 1884.

R. A. HILL, *Judge.*

Certificate to Record.

UNITED STATES OF AMERICA, } ss:
Northern District of Miss., }

I, George R. Hill, clerk of the district court of the United States for the western division of the northern judicial district of Mississippi, hereby certify that the foregoing pages of this record contain a true and perfect transcript of all the pleadings, proceedings, proofs, & orders, &c., belonging or in anywise pertaining to the case of Estes, Doan & Co. against S. G. Spain *et al.* in said court, as fully as appears from the original on file & of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at my office in Oxford, in said district, on this the 1st day of August, A. D. 1884.

[Seal United States District Court, Northern District Miss., Western Division.]

G. R. HILL, *Clerk.*

142 *Opinion of the Court.*

In the District Court of the United States for the Northern District of Mississippi, at Oxford. December Term, 1883.

ESTES DOAN & CO. *vs.* S. G. SPAIN *et als.*

R. H. Taylor, J. G. Hall, & Luke Wright, for complainants; Sullivan & Sullivan & E. Mayes, for defendants.

This cause is submitted to the court upon bill, answer, exhibits, and proofs, from which the following facts appear:

S. H. Gunter, a merchant of the town of Sardis, in this State, was on the 25th day of March, 1882, largely indebted to the complainants and other merchants, a number of whom are made defendants to the bill, and on that day executed a deed of general assignment, purporting to convey all of his property, real & personal, and all his notes, books of accounts, and other assets of every description to S. G. Spain, as trustee, for the purpose of paying his debts, which it is admitted on the face of the assignment he was unable to pay in full, reserving, however, from the conveyance the property owned
143 by him exempt by law from execution and sale, a schedule of which is given. Soon before and about the same time said Gunter executed another conveyance, conveying to J. B. Boothe, as trustee, certain real estate described therein to secure and save harmless his sureties upon a note which he owed to the Sardis Bank, and at or about the same time said Gunter transferred and delivered to a number of his clerks and employees certain notes and accounts in payment of an alleged indebtedness to them, and shortly before this time and at a time when, from the proof, he contemplated conveying away and dispossessing himself of all his visable means he delivered to his wife the sum of nine hundred dollars in payment of an alleged indebtedness to her for money which it is claimed by him he received from the estate of his wife's grandfather and belonged to his wife in the year 1858.

Within a short time after these conveyances were made and money paid defendants Bickham & Moore and other creditors sued out attachments in this court and caused the same to be levied by the marshal on the goods and assets in the hands and possession of said Spain, the trustee, to whom they had been delivered under the assignment. Complainants, who are by far the largest creditors who are preferred under the assignment, filed this bill, alleging, among other things, that the assignee was unwilling further to execute the trust conferred upon him by said assignment, and had abandoned the same; that the amount of the debts upon which attach-
144 ments had been levied upon the property far exceeded its value, and that unless the trustee or some one else in interest would give a claimant's bond the property would be sold at a great sacrifice, and alleged that the assignment executed to the said Spain was made in good faith, valid, and a binding security for the debt due to complainants, and prays that these attaching creditors be enjoined from proceeding further with their said attachment suits;

that said deed of assignment [be,] by *by* decree of this court, declared a valid assignment, and that a trustee or assignee be appointed to execute the trusts created by it in the room & stead of said Spain, the assignee therein. The answers deny that the assignment was made in good faith and is a valid and legal transfer of the property and assets therein conveyed for the purposes expressed, as against the defendants who were creditors of the assignor before the assignment was made, and deny that complainants are entitled to the relief prayed for in their bill.

The question of the validty of the assignment is the main question to be determined.

If there is any provision on the face of the assignment or if there is any provision wanting in it which renders it fraudulent and void in law, or if the facts, as shown by the evidence, shows a purpose on the part of the grantor to secure a benefit to himself or to hinder or delay his creditors, or any of them, in the collection of their debts, then the assignment must be declared fraudulent and void, and the bill dismissed, as the debt due complainants is an antecedent debt. Under the well-settled rules in this State they or the assignee do not occupy the position of a *bona fide* purchaser without notice; so that if the assignment is fraudulent and void for any reason as against the grantor, the benficiaries under it can take nothing by it. The first question to be considered is, Does the assignment on its face contain any provisions or omit any provision which in its effect will or may hinder and delay the grantor's creditors, or work an injury to them not sanctioned by law? The assignment was evidently drawn by a skilful lawyer, with unusual care, and most of the provisions and omissions which are most usually relied upon and sustained in holding such conveyances fraudulent and void are in the assignment avoided, and at first view there would appear no objection to it appearing on its face.

The claim in the assignment providing for the disposition of the money arrising from the collection of debts and the sale of property, after providing for the payment of the costs and expenses of executing the trust and for the payment of the preferred creditors, provides that the surplus, if any, shall be paid *pro rata* to the unsecured creditors, whose names are given, and the amount due to each, as stated in a schedule annexed to the assignment and made part of it, and to any other creditors who are omitted therefrom, but does not mention a time in which these omitted creditors shall present their claims, nor the mode in which they shall be established. The assignee is directed to make the distribution with convenient speed, but fixes no limit of time in which it shall be done. It is insisted by defendants' counsel that these omissions leave it to the discretion of the assignee, who is the assignor's confidential friend, former book-keeper, and wife's present partner, to postpone the distribution to an indefinite period, and to the delay and hindrance of the creditors in collecting their debts.

It has been held by the supreme court of this State in the case of Mayer vs. Shields & Mulhollan, 59 Miss., 107, and by this court in the recent case of Bickham & Moore vs. Lake & Husten, that wherever, in

a deed of general assignment by an insolvent debtor, it is required that something must be done by the debtor in order to participate in the funds, that a reasonable time, not too long or too short, must be given in which to do the thing required to be done, and that the want of such a provision will enable the assignee to unduly postpone the distribution [to] the hindrance and delay of the creditors, and thereby render the assignment in law fraudulent and void. In this case writing is required of the omitted creditors to be done in order to participate in the funds to be distributed. And it is a matter of some doubt whether this defect alone renders the conveyance void, but these omissions are circumstances to be taken in connection with the proof in the cause to determine whether or not there existed fraud in fact in the execution of the assignment.

147 The assignment further provides that if any property or debts have been inadvertently or by mistake omitted the assignee shall place them upon the proper schedules, and this, it is claimed, renders the assignment void. The indebtedness mentioned means the debts due to the assignor and not those due by him, and this provision was right & proper and could not in any way prejudice the creditors, but the contrary.

Admitting the assignment to contain nothing on its face to invalidate it, the next question is, Does the evidence show a fraudulent purpose in the grantor in making it?

The proof abundantly shows that the grantor was hopelessly insolvent, and that for some twelve days, by his own testimony, he knew it and contemplated making a general assignment of all his property and assets, saving his exemptions; hence, all he *done* subsequent to that time in the disposition of his property, assets, and money must be considered in determining this question. The proof shows that the goods & merchandise was sold mostly for cash and at low rates. The proof further shows that subsequent to the time he paid his wife the sum of nine hundred dollars, which he claims he was advised by his counsel to do, in payment of a debt which he claims he owed her for money received from her grandfather's estate in Alabama in the year 1852.

There is proof tending to show that his wife repeatedly took money from the drawer during this time, and that more

148 goods than usual were taken to his residence from the store. If all this was fair it might have been explained by the testimony of Mrs. Gunter. She was present when her husband's deposition was taken, yet she was not examined.

The rule is that the transactions between husband & wife are to be strictly scrutinized, and if there are slight circumstances going to impeach the *bona fides* of the transaction the burthen of proof is thrown upon those claiming under it to establish the fairness and validity of the transaction; coupled with this is the rule that when suspicious circumstances are shown against the transaction and the party required to explain it, if fair & valid, has proof which could be produced to establish its fairness and he fails to do so the presumption is that the transaction was unfair or that it is to be taken against its fairness. This rule applies to the facts of this case with

no little force. Notwithstanding the assignor in his testimony refers to the records of the courts in Alabama and in this State, it was the duty of the complainants to produce the proof, and not that of the defendants to disprove it. As part of the same scheme to dispose of all his means the assignor disposed of part in the payment of what was due his clerks; this he had a right to do, as well as to pay a *bona fide* debt due his wife. The only question in either case is, Was the debt due and owing and that received for it reasonable in value, and the payment made in good faith—free from fraud?

The proof further shows that upon the same night that the assignment was executed, acknowledged, and delivered to the
149 clerk for record there was another deed executed by the assignor, in the form of a deed of trust, for the declared purpose of securing his sureties upon a note due to the Bank of Sardis for $1,000.00, this deed being executed evidently as part of the same purpose and scheme of an entire disposition of his means by the assignor, and as the assignment provided for the payment of the same debt as a preference claim, and also embraced the same property conveyed in the trust deed, subject to the provisions of the trust deed. The two instruments must be considered together, and the trust deed under the circumstances of their execution must be considered as a partial assignment of the property of said Gunter and contracted by the same rules of law applicable to the deed of assignment to Spain. The liability of the sureties was on an antecedent debt to the bank; there was no new consideration to sustain it. The grantor was then hopelessly insolvent, and at the time of its execution was then in the act of transferring all of his property and assets of every description. The conveyance provided that the grantor should retain possession of the property until the maturity of the debt, which did not take place until December 1st, 1882, and not until the beneficiaries in the trust deed should request the trustee to take possession of the property conveyed and sell the same, unless the property should become endangered as a security for the indebtedness, when the trustee might take possession of it & hold it until the debt and costs were paid or the property was sold, but until possession
150 should be demanded by the trustee the grantor should hold the same subject to the trust deed. If this had been a general assignment this reservation of the use of the property would unquestionably render it fraudulent in law. The assignment conveys the same property to secure the same debt as a preferred debt, but subject to this trust deed. According to the trust deed a sale could not take place until the first of December, 1882, and not then until the trustee was notified in writing by the beneficiaries to take possession of and sell the property, unless there was danger of its being lost; and as the property is real estate and uninsurable it is difficult to see how this contingency could arise, and in the meantime the grantor was to hold and enjoy the use of the property. It is difficult to determine that this delay would not have the effect of hindering and delaying Gunter's other creditors; and were this all that is in the case, I am of opinion it would establish the fraudulent character of the conveyance.

It will not do to say that the property might have been sold subject to the trust deed, for in that event the value of the interest sold would be uncertain for the purchaser to pay any but a small sum. But the complainants allege in their bill that the conveyance was made in good faith and free from all fraud, and claim affirmative relief. This allegation is denied under oath by the answer, and throws the burthen of establishing the averment upon complainants to grant to complainants all that they can claim—that is, that the conveyance is *prima facie*, valid, and free from fraud. Yet,

151 when circumstances are proven casting a doubt upon the validity of the conveyance the burthen is then upon the complainants to establish its fairness and freedom from fraud. When all the circumstances already stated and others shown from the proof are considered, occurring before and at the time of the execution of the assignment, I am satisfied that the conveyance must be held as fraudulent and void, and that complainants are not entitled to any relief under their bill. The result is that the injunction heretofore granted must be dissolved and bill dismissed at complainants' cost.

R. A. HILL, *Judge*.

Filed March 3d, 1884.

G. R. HILL, *Clerk*.

I, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the foregoing 9½ p'g's contain a true and complete copy of the original opinion of the court herein as the same appears on the files in said court.

Witness my hand and the seal of said court, at Oxford, Miss., this the 1st day of Aug., 1884.

{ Seal United States District Court, }
{ Northern District Miss., Western Division. }

G. R. HILL, *Clerk*.

Endorsed on cover: N. Mississippi D. C. U. S. No. 285. Z. N. Estes and J. H. Doan, partners as Estes and Doan, appellants, *vs.* S. H. Gunter, Beckham, and Moore *et al.* Filed September 5, 1884.

121-183

IN THE

Supreme Court of the United States.

AT THE OCTOBER TERM 1886.

Z. N. ESTES, ET AL., APPELLANTS,

v. } No. 285,

S. H. GUNTER, ET AL., APPELLEES.

BRIEF OF LUKE E. WRIGHT,

OF COUNSEL FOR APPELLANTS.

TRACY & GIBSON, PRINTERS, 310 MAIN ST., MEMPHIS.

IN THE

Supreme Court of the United States.

AT THE OCTOBER TERM 1886.

Z. N. ESTES, ET AL., APPELLANTS,

v. } No. 285,

S. H. GUNTER, ET AL., APPELLEES.

BRIEF OF APPELLANTS IN OPPOSITION TO THE MOTION OF THE APPELLEES TO DISMISS THIS CASE FOR WANT OF JURISDICTION.

STATEMENT OF THE CASE.

On the 25th of March, 1882, S. H. Gunter, a merchant and citizen of Mississippi executed to S. G. Spain, as trustee, also a citizen of Mississippi, a general assignment of all his property, consisting of stock of goods, notes, book accounts, etc., for the purpose of paying debts due appellants and other creditors of the assignor. The debt due appellants by the assignor amounted to more than $13,000, $10,000 of which was made a preferred debt. (Pps. 7, 8 and 18 of Record.) The stock of goods and other personality embraced in the assignment was valued at $12,315, the promisory notes due Gunter embraced in the assignment footed up more than $17,000, the open accounts embraced in the assignment footed up more than $15,000. (See pp. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 74 of Record.) Shortly after this assignment was put of record the appellees, Bickham & Moore, and other creditors of Gunter, sued out writs of attachment in the Circuit Court of the

United States for the Northern District of Mississippi, and the same were levied upon the goods, notes and book accounts embraced in said assignment. The attachment of the appellees, Bickham and Moore, was first in point of time and was first levied upon said goods, notes and book accounts, and all other levies were made subject thereto. The assignee, Spain, immediately upon the assignment being made to him, took possession of the conveyed property, but when the same was levied upon and taken out of his hands by the United States Marshal, he determined to have nothing further to do with the matter, declined to execute said assignment or to carry out the trusts therein contained, or to defend said attachment suits, and so announced to appellants. In this state of affairs appellants filed their bill in this case, setting out the foregoing facts. The purpose of the bill, as will be seen by reading it, was two fold—first, to have a trustee appointed to perform the duties prescribed by the assignment to the assignee, Spain, and which he had declined to execute as assignee, or to have the court itself carry out the provisions of said assignment: and, second, to enjoin the attachment suits at law and have them all settled in one proceeding. The court, upon final hearing, declared the assignment fraudulent and void on its face, and dismissed for that and other reasons appellants' bill, and they appealed to this court.

BRIEF.

1. It will be seen from the foregoing that appellants had a preferred claim to the amount of $10,000, which it was the duty of the assignee, Spain, to pay out of the moneys realized from a sale of the property vested in him by the assignment. His refusal to protect the trust property and his declining to execute said trust jeopardized the debt of appellants. The legal title of the property out of which that debt was to be paid was vested in Spain, the assignee. Appellants only had an equitable right under said assign

ment. No one but Spain could defend the attachment suits brought by appellees or which might be brought by other creditors. The appellants were threatened with irreparable injury by Spain refusing to act, and only a court of equity could protect them by either appointing another trustee in the room and stead of Spain or by itself carrying out the provisions of the assignment. *Their whole claim was jeopardized and was much over* $5,000, *and the value of the property embraced in the assignment by Gunter was many times* $5,000, as the record abundantly shows. The fact that the receiver had only paid into court at the time of the final hearing but $4500 by no means proves or tends to prove that this was the entire value of the property assigned. The record shows that the receiver has never made a report to the court. He may have collected much more than he has paid in, but whether he has or not it is palpable that there are a large number of uncollected notes and book accounts, and the face of these notes and book accounts is the amount in controversy, and as already shown, they aggregate many times the jurisdictional amount.

2. The counsel for the appellees in his brief contends that the only parties to this appeal are Estes & Doan and Bickham & Moore, and that as the claim of the latter is only $3,000, no appeal should have been allowed. This position, whilst plausible, is *wholly unsound*. The point would be well taken it it were true in fact that Bickham & Moore are the *only* parties defendant. *The fact, however, is otherwise. S. G. Spain, the assignee, is a party defendant. His refusal to execute the provisions of the assignment, to defend the attachment suits levied upon the trust fund in his hands under the assignment, or in any manner to act as trustee, furnish the principal grounds of complaint set forth in the bill filed herein. Courts of equity have always exercised jurisdiction over trust estates and trustees. No trust is ever permitted to fail for want of a trustee. The court will either ap-*

point a trustee in the room of one refusing to act or acting improperly, or will execute the trust through its own officers. This is elementary doctrine.

The fact that a pro confesso was taken against Spain in no way affect his status as defendant. The court, by its decree rendered after this pro confesso, refuses the relief prayed for, so that appellants took nothing thereby. It is from this action of the court in refusing to execute the trust primarily, that Estes & Doan have appealed. They have much more than the jurisdictional amount at stake, which they will lose if the decree of the Circuit Court stands.

3. Beckham & Moore were not *necessary parties to the suit. It was proper to make them defendants*, because they have seized through their attachment the trust fund out of which Estes & Doan insist their debt should be paid. Jurisdiction as to them was purely auxiliary and incidental to the principal relief sought. *The appellants might have dismissed as to them, and still have left their equity unimpaired.* The fact that they were joined as parties and now remain such cannot affect appellant's right to relief or to an appeal to this court when that right is refused. The cases of Dows vs. Johnson, 110 U. S., and Stewart vs. Dunham, 115 U. S., cited and relied on by counsel for appellee, it is respectfully submitted, have no bearing on this case. They simply decide that where the amount in controvery is less than $5,000 the Supreme Court has no jurisdiction, a proposition not controverted. We have already shown that the amount in dispute here is over the jurisdictional limit.

The case of Freeman vs. Dawson, 110 U. S., 264, is persuasive in our favor, but the facts of that case are not nearly so strong to support jurisdiction as are here presented.

Lucien E. Knight
Of Counsel for Appellants

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The case of Freeman vs. Dawson, 110 U. S., 264, is persuasive in our favor, but the facts of that case are not nearly so strong to support jurisdiction as are here presented.

Allen Knight
Of Counsel for Appellants

121-186

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, 1886.

Z. N. ESTES AND J. H. DOAN,

Partners as Estes, Doan & Co.,

vs.

S. H. GUNTER, BICKHAM & MOORE. ET AL.

BRIEF OF LUKE E. WRIGHT,

OF COUNSEL FOR APPELLANTS

TRACY & GIBSON, PRINTERS, 299 MAIN ST., MEMPHIS.

IN THE

Supreme Court of the United States,

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Z. N. ESTES AND J. H. DOAN,

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vs.

S. H. GUNTER, BICKHAM & MOORE, ET AL.

BRIEF OF LUKE E. WRIGHT,

OF COUNSEL FOR APPELLANTS.

STATEMENT OF FACTS.

On the 25th of March, 1882, one S. H. Gunter, who had for several years prior to that time been a merchant engaged in business in the town of Sardis, Mississippi, being insolvent, made a general assignment of his entire stock of goods and property to one S. G. Spain, as trustee, for the benefit of his creditors, and the same was duly recorded on that day. The assignment preferred certain creditors, who were named in Schedule "E," attached thereto, and who were designated as class No. 1. Among these preferred creditors were the complainants, Estes, Doan & Co. Their debt against Gunter amounted to $13,587.68, but they were only preferred to the amount of $10,000. The deed of assignment will be found in full in

the Record at pages 7, to 19, inclusive. Estes, Doan & Co. are wholesale grocery and cotton merchants of Memphis, Tenn., and said debt grew out of advances of cash and supplies made by them to Gunter. The amount and justice of their debt is abundantly established, and is not controverted.

On the same day that Gunter made said assignment, and no doubt in contemplation of it, he executed a deed to J. G. Hall, as trustee, upon a house and lots in said town of Sardis, to indemnify Mess. Boothe, Rice and Carleton, who were sureties upon a note of Gunter's, held by the Bank of Sardis, for $1,000, and due December 1st, 1882. The deed was to be void if the note was paid at maturity; otherwise the trustee was empowered to sell and apply proceeds to payment of said note. This trust deed was also duly recorded on same day and a few minutes ahead of the other. It will be found in full on pages 75 and 76 of the Record.

A day or two following the putting to record of said assignment, defendants Bickham & Moore, who are also creditors of Gunter, sued out an attachment against him in the Circuit Court of the United States for North Mississippi, and same was levied on the property assigned by Gunter as trustee as aforesaid. Following in quick succession several other of Gunter's creditors, attached subject to Bickham & Moore's prior levy. The property was, of course, seized by the Marshal. Spain, the assignee, thereupon renounced his trust and declined further to act. At this juncture complainants, Estes & Doan, filed their bill in this case, setting up their debt, the assignment by Gunter to Spain, the preference given them therein, the various attachments levied, Spain's refusal to act, &c., and prayed the court to execute the trusts contained in said assignment and to enjoin Bickham & Moore and other attaching creditors from further proceeding with their suits. Bickham & Moore and other defendants answered, claiming

that said deed of assignment was fraudulent and void, but admitting that Spain had refused further to act as trustee or assignee. Spain did not answer, and as to him a *pro confesso* was taken. Proof was taken, and upon the hearing the court was of opinion that said deed of assignment was fraudulent and void.

First—Because of the execution of the trust deed to said Hall; and second, because there was evidence tending to show fraud in fact on Gunter's part in paying his wife $900 shortly before the assignment for a debt which he claims to have owed her; in permitting her to take money from the cash drawer, and lastly, because more supplies than usual were sent from Gunter's store to his home shortly prior to said assignment. From this decree complainants have appealed.

BRIEF.

It is well settled that under the laws of Mississippi a debtor may make a general assignment, in which one or more creditors may be preferred over others, and the same rules apply and govern in construing such an assignment as one in which no preferences are given.

Eldridge vs. Phillipson, 58 Miss., 270.
Richardson vs. Marqueze, 59 Miss., 80.

The assignment upon which complainants here rely, and which they ask the Court to enforce, is absolutely unobjectionable in form and substance. A perusal demonstrates this. It is true His Honor, the Circuit Judge, in his opinion, seems to somewhat criticise the assignment because it does not fix a precise date within which any creditor whose name was omitted from the schedule of creditors, should present his claims, nor the mode in which such claims should be established. The answer to this is that it does not appear there was any omitted creditors. And even if there were they were entitled to their *pro rata*

at any time during the administrations of the trust. Had there been a short limitation of time given for creditors omitted, this perhaps might have been a just subject of criticism. Further, had some unusual or burthensome requirement been prescribed for proving their claims, this might have been objectionable, and no doubt would have been enlarged upon as a badge of fraud. So, also, it is hinted that the fact that the assignee is not limited to a fixed time, within which to make a distribution to creditors, may be open to objection. The assignment directs him to act in this respect with all reasonable diligence. Even had it been silent, the law imposes just this duty on him, and upon every principle of construction, the assignor would be presumed to have intended that the assignee should do his duty. The fact is, it would have been a much more just ground of attack, had the assignment fixed a precise date within which distribution was to be made. Had a time too short been fixed it would have been perhaps fatal, because the result would have been to unnecessarily sacrifice the debtors' assets to the loss of creditors. On the other hand, had the date been remote, it would have hindered and delayed creditors and so invalidated the instrument. Objections of this nature have been frequently made to assignments for the benefit of creditors, and often sustained. But no case, we believe, can be found where such objections as are here suggested by the learned Circuit Judge were ever made. Certainly, none where they were recognized as sound. The case of

Mayer vs. Sheilds, 59 Miss., 107.

cited in the opinion, was an assignment for the benefit of such creditors as should release their debts in full. Such release was made a condition to recovering a dividend under the assignment. No time was fixed, however, within which creditors were to signify their assent to or dissent from the proposition. The consequence being, as

the Court says, "that the assignee can never know when to begin to make distribution. He can never determine what any creditor's share is to be until he knows what creditors are coming, and as the period within which they may do this is unlimited—so also must be the delay in the collection of any and all the debts." We respectfully submit this case has no bearing on the matter in hand. Indeed, the Circuit Court, although evidently scrutinizing the assignment with a jealous eye for defects, in effect admits it to be valid in its face.

Second—We submit that the fact that Gunter made the trust deed to secure his sureties on the note due the bank is not a badge of fraud, which can by possibility affect the validity of the assignment. Conceeding for the argument that at the time he executed this deed he contemplated making the assignment, he did nothing more than he had a right to do. The property conveyed was his own. He had a right to prefer one creditor over another. It was right for him to protect his accommodation sureties. It is not even pretended that they were not *bona fide* such sureties. There is not the slightest evidence of fraud either on the face of the deed or in the proof. The proviso that Gunter, the mortgagor, was to remain in possession was usual and proper. This is not controverted. The learned Circuit Judge decides that because he made the trust deed in contemplation of the assignment, therefore the two instruments must be construed and considered together, and that as the trust deed contained the provision that Gunter was to remain in possession of the house and lots until the maturity of the note held by the bank, viz.: 15th of December, 1882, this was a reservation to the advantage of Gunter and avoided the assignment. To reach this extraordinary conclusion the court is forced to ignore the express terms of the assignment, wherein the bank's debt will be found scheduled among the preferred creditors, and the house and lots embraced in the trust deed scheduled

as a part of the property conveyed to Spain, the assignee. The court further overlooks completely the plain provision "that said party of the second part (Spain the assignee) shall take possession of the said property hereby assigned and shall with all convenient dilligence sell and dispose of the same, etc."

The assignment was subsequent to the trust deed and, of course, was not modified by it. We confess we are unable to conceive how any creditor could be hindered or delayed or defrauded, or how any benefit or advantage was reserved to Gunter. Manifestly the assignee had the *immediate* right to take possession of the house and lots and to sell the same. This seems too plain for argument.

Even if His Honor's construction of the two instruments were correct, if it were necessary we should deny that there was any fraud either in law or fact in the transaction. For it seems plain that if Gunter had reserved the equity of redemption, and possession of the lots, he would have had a perfect right so to do. No creditor could complain, as it would have been subject to his debt.

Rec. Code Miss., Sec. 1204.

Third—We submit that the proof in the record entirely fails to support the other conclusions reached by the Circuit Judge of fraud in Gunter, upon which he relies to set aside the assignment. The fact that he paid his wife $900 upon a debt which he owed her a few days prior to the assignment it is claimed is not clearly shown to be *bona fide*. The only proof on the subject is what Gunter himself says. He swears that his wife had a separate estate from her father, which he used, and he refers to the records, where the truth of his statement will be verified. He is uncontradicted. Presumably he has told the truth. Fraud is never presumed, but must be proven. He had a right to prefer or pay his wife.

Savage vs. Dowd, 54 Miss., 728.

Even if it were true that his payment to his wife was fraudulent, it is difficult to see how a subsequent *bona fide* assignment for the benefit of his creditors could be affected thereby. The assignment must stand or fall on its own merits, and cannot be overturned by an antecedent collateral act of fraud by the assignor. A prior fraud has been repeatedly held not to avoid a subsequent assignment. To this effect see

Burrell on Assignments, p. 528 and note 3, (4th ed.).
Rembard vs. Bank Ky., 6 B. M., 252.
Wilson vs. Berry, 88 Penn. St., 167.

Suppose Gunter had, instead of paying his wife, as he did, named her as a creditor in the assignment, and had preferred her over all other creditors—when in point of fact he owed her nothing,—this would have been a fraud on his part, but it would not have avoided the assignment as to other *bona fide* creditors.

Bump. on Fraud. Conveyances, 383.
Craft vs. Bloom, 59 Miss., 69.

This would certainly furnish much stronger reasons for declaring the assignment void than where a failing debtor fraudulently pays a fictitious debt and thereafter makes an assignment of his assets to pay *bona fide* creditors. In the one instance the fraud is a part of the assignment and in the other antecedent and collateral.

The evidence which His Honor referred to as tending to show that Gunter's wife took money from the cash drawer of his store at various times prior to the assignment, and that Gunter sent an unusual quantity of supplies from his store to his home for his family, comes alone from the witness, E. A. Carleton, whose evidence will be found on pages 54 to 58 of Record. This witness, as he is forced to admit, is unfriendly and hostile to Gunter, and a volunteer

against him. But his evidence, when analyzed, amounts to nothing. Mrs. Gunter was a clerk in the store, and it was her duty to take money from the cash drawer in the course of business. Gunter had no other means of support, and drew his supplies from his store. He had a large family. There is hardly a suspicion raised by Carleton's evidence, even if he were unbiased and uncontradicted. But he is directly contradicted by Gunter, Spain and Dugger. See their depositions, pages 52, 59 and 67 of Record. But even if it were conceded to be true, as the Court seemed to think, this, as already shown, would not affect the subsequent assignment, if otherwise unexceptionable.

Fourth—The evidence clearly shows that the complainants, Estes, Doan & Co., are *bona fide* creditors of Gunter, and that they were innocent of any fraud of Gunter assuming that there was fraud. We insist that this being so, even if there was an actual fraudulent purpose entertained by Gunter, the assignment would be good in favor of his creditors, who did not participate in the fraud, and were innocent of wrong. See

Emerson vs. Senter, 118. U. S., 3.

We think this case conclusive it applied to the one in hand. That was an Arkansas case, and the Court seemed to have followed the Arkansas decisions, which held substantially the same way. The Mississippi cases seem to have decided contra. But we insist that the law governing assignments is a part of the general commercial law of the county, and that this Court will not be controlled by the State decisions.

Luke E. Wright
Solr for Complts

Office Supreme Court U. S.
FILED.
FEB 12 1887
JAMES H. McKENNEY,
CLERK.

121-183

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

Z. N. ESTES & J. H. DOAN, APPELLANTS,
vs.
S. H. GUNTER, ET AL., APPELLEES.
No. 285.

STATEMENT OF CASE:

Z. N. Estes and J. H. Doan are the sole complainants in the case. They are both citizens of Tennessee. See record, p. 1.

No issue is raised and no answer filed by any one as defendant in the case except by Bickham & Moore, J. F. Frank, Lemmon & Gale, Hill & Mitchell. Record, p. 24.

Appellants voluntarily *dismissed* the case as to all these defendants *except* as to Bickham & Moore. Record, p. 79.

S. G. Spain failed to answer, and *pro confesso* was taken as to him. Record, p. 80.

The *amount* of Bickham & Moore's claim was less than $5,000.00 Record, pp. 19, 3.

The sole issue is therefore between appellants and Bickham & Moore, whose debt is less than $5,000.00, and less than the jurisdiction of this Court.

MOTION.

Bickham & Moore move the Court to dismiss the appeal in this case *as to them.*

1. Because it was taken for manifest delay. The record was not even printed until more than two years after the appeal was taken.

2. Because the Court cannot entertain jurisdiction where the amount is less than $5,000.00, in dispute or controversy. Stewart et al., vs Dunham, et al., 115th U. S. Report, p. 61 2 3.

Several claims cannot be united in order to give sufficient amount. *Ib.*

The cause having been voluntarily dismissed as to all other defendants answering, this Court has no jurisdiction of the appeal as to them, and hence, must be dismissed as to them also.

The appeal has not been prosecuted and should be dismissed as to all.

Rule 6, (subdivision 6,) of Supreme Court.
Rule 21, of Supreme Court.

H. M. SULLIVAN,
Of Counsel for Bickham & Moore and Appellees.

121-186

SUPREME COURT U.S.
FILED
MAR 1 1887
JAMES H. McKENNEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

AT THE OCTOBER TERM, 1886.

L. N. ESTES AND J. H. DOAN, Appellants,

v. No. 285.

S. H. GUNTER et al., Appellees.

IN THE
SUPREME COURT OF THE UNITED STATES.

AT THE OCTOBER TERM, 1886.

L. N. ESTES AND J. H. DOAN, APPELLANTS,

v. No. 285.

S. H. GUNTER ET AL., APPELLEES.

STATEMENT OF THE CASE AND MOTION.

On the 25th day of March, 1882, S. H. Gunter, a merchant, executed to S. G. Spain, as trustee, a commercial general assignment, with certain preferences. Shortly after the assignment was made, certain creditors of the assignor sued out attachments and levied the same on the assigned property. Whereupon, Estes & Doan, the appellants, who were preferred by said assignment to the amount of $10,000, and who were citizens of Tennessee, filed their O. Bill in the United States District Court in the Western Division of the Northern District of Mississippi, against the assignee and all the attaching creditors and certain of the non-attaching creditors, setting up the execution of said assignment; the levy of said attachments, alleging that the assignee refused to act, and that the non-attaching defendant creditors were threatening to attach and praying that a new trustee be appointed, that the assignment be declared valid, and that the same be effectuated, and for an injunction.

None of the non attaching creditor defendants were ever

brought into court by any process or publication. The attaching creditor defendants answered [4]; and Spain, the assignee, was duly summoned. After the cause was at issue [5], and quite a lot of testimony had been taken [6], the appellants voluntarily dismissed their bill as to *all of the defendants before the Court*, except Bickham & Moore and the assignee [7]. At the same time, they entered a *pro confesso* against the assignee [8]. The cause was then heard, and a decree final rendered for the defendants [9], whereupon appellants prayed an appeal in open Court, which was granted [10]. The amount of Bickham & Moore's attachment was $3,000 [11]; and the property levied on brought, when converted into money, less than $5,000 [12].

1. Transcript, marg. p. 16.
2. Transcript, marg. p. 9.
3. Transcript, marg. p. 4.
4. Transcript, marg. p. 24.
5. Transcript, marg. p. 26.
6. Transcript, marg. p. 26 to 74.
7. Transcript, marg. p. 79.
8. Transcript, marg. p. 80.
9. Transcript, marg. p. 80.
10. Transcript, marg. p. 83.
11. Transcript, marg. p. 6.
12. Transcript, marg. p. 132.

The appellees, Bickham & Moore, move Court to dismiss the appeal, because the amount in controversy does not exceed $5,000.

EDWARD MAYES,
Of Counsel for Appellees.

ARGUMENT

1. The proposition that the amount in controversy does not exceed $5,000 is maintainable from either one of two points in view.

A.—The amount of the property involved in the litigation, even in the Court below, is not shown by the record, or otherwise, to exceed $5,000. The following are *all* of the averments in the record as to its value:

"The property levied upon in the hands of the assignee is not worth altogether, as your orators are informed and believe and so charge the fact to be, near the aggregate amount claimed in said attachment suits, the sum so claimed being more than seventeen thousand dollars, and the property taken from said assignee consisting chiefly of books of accounts, notes, choses in action, and debts due

said Gunter, all of uncertain value, and a large portion of them entirely valueless, and the stock of merchandise aforesaid, which, while valuable, could not possibly be made to bring any thing like the invoice price thereof in the hands of any person except a merchant regularly engaged in trade," etc. O. Bill, p. 10 of Transcript.

See also the schedules to the assignment exhibited with the O. Bill p. 21 to 35 of Transcript.

"As to the value of the property, notes and accounts attached, respondents are not advised, and can neither admit nor deny." Answer, p. 46 of Transcript.

In the deposition of Gunter, p. 126 of Transcript, is found this interrogatory and answer: "What did you estimate the stock of goods included in your assignment to be worth?

"Answer.—At about $12,000 00; no invoice had been taken."

This question and answer are directed entirely, not to the actual values of the goods, but to Gunter's valuation of them in his assignment schedule (see "Schedule C, p. 21 of Transcript); and the tendency of the man's answer is to admit an over valuation and to explain himself out of a scrape by saying that no invoice had been taken.

The Receiver's account, p. 132 of Transcript, shows that he has paid into Court, as received by him, the aggregate sum of $4,520 84—the $4,000 00 item appearing therein being but a parcel of the $4,520 84 allowed by the Court to be taken out by appellants on a refunding bond.

And in the order of 23d July, 1884, p. 138 of Transcript, we find: "In all these cases the claimants, Estes, Doan & Co., having been heretofore allowed by the order of the Court to take the proceeds of the sale of the property levied on in these causes (being $4,000 00) out of this Court," etc.

The foregoing is all the showing contained in the record of the value of the entire property in controversy below. On this point I cite

Hogan v. Faison, 10 Peters, 160.

Parker v. Morrill, 106 U. S., 1.

Elgin v. Marshall, 106 U. S., 578.

B.—Even if the property involved in the litigation below were shown by the record to exceed $5,000 00 in value; yet still that fact would not give jurisdiction here.

Dows v. Johnson, 110 U. S., 223.

Stewart et al., v. Dunham et al., 115 U. S., 61.

The amount in controversy directly between the parties to the appeal, determines the question; and if the claim or demand of either party fails to exceed $5,000 00, there is no jurisdiction. Who are the parties to this appeal? Who could be parties to it? Obviously, only Estes & Doan, the appellants, and Bickham & Moore, the appellees. There is no controversy between appellants and the attaching creditors, as to whom they voluntarily dismissed their bill; there can be none as between appellants and those nominal defendants whom they never brought into Court; and there can be none, as between appellants and the assignee, against whom they obtained a *pro confesso*, and who has not appealed. It is true that the preferred demand of appellants is $10,000 00; but it is also true that the attachment of Bickham & Moore, the only possible appellees, was for only $3,000 00, and since appellants could get wholly rid of the only defendants whom they have brought in by their bill and have retained in the cause, by paying their debt of about $3,000 00, how can it be possible that over $5,000 00 is in controversy?

The case of *Freeman v. Dawson*, 110 U. S., 264, does not apply here. In that case, Dawson, a judgment creditor to the amount of $5,629 00, assailed a fund of $6,000 00, as against a trustee who claimed under a single deed given to secure various debts (aggregating about $18,000 00, and some of the debts being in excess of $5,000 00). The appellant and appellee were the creditor and the trustee, which is not the case here, and on the record could not possibly be the case on appellant's appeal.

EDWARD MAYES,
Of Counsel for Appellees.

12th—183

In the Supreme Court---October Term, 1886.

Z. N. ESTES & J. H. DOAN,
vs.
S. H. GUNTER, BICKHAM & MOORE, *et al.* } No. 285.

BRIEF FOR BICKHAM & MOORE.

1. The Bill seeks to establish and enforce a deed of assignment—voluntary deed of assignment. R. P. 1-9.

2. The answer alleges that the assignment was fraudulent and void, and seeks satisfaction of the judgments which have been rendered against Gunter and the assigned property. R. P. 24.

3. TESTIMONY.

A. The testimony of Z. N. Estes, J. H. Doan, S. S. Spicer and J. M. Maury are all simply to the point that Estes & Doan's debt is a *bona fide* one, and that they *did not know* of any actual fraud of Gunter in making the assignment.

B. The testimony of S. G. Spain, book-keeper of Gunter—and S. H. Gunter's testimony—is to the point; *first*, as to Spain's that he *knew of no fraud* on part of Gunter; Gunter *denies* all fraud alleged in the answer.

4. DEFENDANT'S TESTIMONY.

Walter Carlton—P. 50 of Record—is merchant, no kin, not interested; heard talking and noises in the store at night just before assignment; bought hats and suspenders just before assignment at less than usual prices—$3.50 for whole lot, which would have sold, even at wholesale prices, at $7.00 per dozen—the hats alone would. Middle counter was usually filled with goods in Gunter's store; all *disappeared just before assignment.* Nothing but *hoes and rakes left there.*

B. Wm. A. Dugger, Gunter's salesman for years: Gunter *about time of the assignment did take a good many goods away* from the store *to his house.* P. 52. *Mrs.* Gunter took *cash* from drawer. I sent 100 pounds of *hams* to Gunter's, a few days before assignment. *Clothing* was usually kept on center counter.

C. E. A. Carlton—farmer, but has been book keeper for Gunter: *After* Gunter told me of assignment, gave me $1500 of claims; dress goods were *gone*—P. 57 of Record; one or two *bales* of cassimere and fine trimmings *gone; Mrs.* Gunter kept *taking money out of drawer and pocketing it, and no account kept of it;* Record P. 57.

12th Interrogatory—"Do you know of any unusual amount of goods being taken away from store just prior to 25th March, 1882?"

I know of some hams, coffee, sugar, lard, cotton seed oil and flour. A Tierce of hams which came just before the assignment; Gunter told me *not to open and it disappeared.* Selling cheap—principally for cash—some for less than usual prices. *Mrs.* Gunter is now merchandising and is partner of S. G. Spain!! She never was so engaged before. Gunter is clerking for Spain and Mrs. Gunter! I saw S. H. Gunter at the store just before the assignment *at late hours in the night!* Said Spain was behind with books.

Answer X Interrogatory 1—Spain said soon after the assignment to just hold up a *few days;* that Gunter would be all O. K. in a few days. My talk was with view of learning what they were doing. P. 58.

Ans. to 5th X Int.—There were 2 or 3 barrels sugar, 1 or 2 sacks coffee, 20 gallons cotton seed oil. I was instructed to direct the dray with these things to Mr. Gunter's house two or three times. Gunter did have another source of supply for his family besides his store.

In answer to X Interrogatories 7, 8, 9, 10, propounded to S. G. Spain, P. 62 of record, "he admits that he owned no real estate except an exempt homestead; had only $350.00 in money and $550.00 in claims, and owed Wm. R. Moore & Co. $1200.00, and yet denied that he was insolvent;" P. 64 record. He is the one who turns up soon after as *partner in business* with *Mrs. Gunter!*

S. H. Gunter answers to X Interrogatories 5, 6, 7, 8, 9, 10, 11, 12, 13, shows that Gunter, at the time of the assignment, took out of the cash in the business $900.00 and gave it to his wife—on a *pretended debt due by open account* since 1858, which indebtedness was not evidenced by any note, account or on his books or otherwise!! 24 years' time elapsed before Gunter was aware that he owed his wife (who was taking money out of the drawer all the time) a debt which should be paid!

The deed of assignment conveys *all* property except the exemptions; P. 7 of Record.

The *deed of trust*, P. 75 of R., conveys part of this *same* property to J. G. Hall, trustee, &c.

Assignment filed 11:50 P. M., and trust deed filed 11:30 P. M. By the terms of the trust deed the debt therein secured was not to be *due* until 1st Dec., '82 and until then no *sale* of it could be had; P. 76 of Record.

This trust deed specially provided that until after maturity, the *grantor, Gunter,* should retain *possession* and use of the property—and even then on sale of the property, it was *specially provided* that all that the property brought over the secured debt, should be paid, *not* to Gunter's creditors, but to *himself*; P. 76 of record.

This effectually tied up and placed this property beyond the reach of Gunter's creditors—if not for all time, at least from 25th M'ch, '82, to 10th Dec., '82—which Gunter had no right to do, and which was a fraud on his creditors, especially as the *possession* and *use* of it was *reserved* to him all this time.

The assignment and trust deed were but one scheme to dispose of his property and must be construed together—they were made at same time and at same sitting.

An assignee for creditors is not a *bona fide* purchaser for valuable consideration.—60 Miss. Rep. p. 362.

The fraud of the *grantor* in deed of assignment vitiates it, no matter if it was accepted in good faith and without any knowledge of the grantor's fraud by the beneficiaries.—59 M. 69.

The Court below, after full, patient and careful consideration, decided that the deed of assignment was fraudulent and made with intent to hinder, delay, defeat and defraud creditors—his decision was eminently proper and should be affirmed.

H. M. SULLIVAN,
Of Counsel for Appellees.

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The Court below, after full, patient and careful consideration, decided that the deed of assignment was fraudulent and made with intent to hinder, delay, defeat and defraud creditors—his decision was eminently proper and should be affirmed.

H. M. SULLIVAN,
Of Counsel for Appellees.

121-183

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 285.

Z. N. ESTIS AND J. H. DOAN, APPELLANTS,

vs.

S. H. GUNTER, BICKHAM & MOORE *et als.*, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR NORTHERN DISTRICT OF MISSISSIPPI, WESTERN DIVISION.

BRIEF FOR APPELLEES.

BY

EDWARD MAYES.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 285.

Z. N. ESTIS AND J. H. DOAN, APPELLANTS,

vs.

S. H. GUNTER, BICKHAM & MOORE *et als.*, APPELLEES.

BRIEF FOR APPELLEES.

I maintain that the decision of his honor below was correct and should be affirmed; because,

First. The assignment in controversy was and is void on its face.

The general assignment was executed on the 25th March, 1882. Attached to it as Schedule B was a description of three several lots of land, assets of the assignor; and this schedule is referred to by the assignment in these terms: "An inventory of the lands, tenements, hereditaments, and appurtenances granted, bargained, sold, assigned, delivered, and conveyed unto said party of the second part is herewith filed, marked Exhibit B, *and made part of this assignment.*"

The schedule so referred to and expressly made a part of the assignment, after describing the lands assigned, says: "All the above described property conveyed *subject to deed*

of trust to J. G. Hall, trustee, for the benefit of J. B. Boothe, J. H. Rice, and W. L. Carter." (Transcript, pp. 7 and 9.)

Thus the deed of trust to Hall, trustee, is by express reference and adoption made a part of the assignment. But that is not all; it would be treated as a part of the assignment even aside from such reference and for the following reasons: The assignor was insolvent and was disposing of his property; he executed both instruments on the same day; they both conveyed the same lands; they were filed for record within twenty minutes of each other; the attorney who drew the assignment is the trustee in the deed of trust, and one of the sureties who is protected by the deed of trust was the law partner of him, who was at once the draftsman of the assignment and trustee in the deed, and he and his partner were the attorneys of the assignee. (*Transcript, pp. 9 and 75, 19 and 77, 73; Ans. X-int.*, 39, 66; *Ans. X-int.*, 34.)

Treating the deed of trust as a part and parcel of the assignment for the two reasons given above, let us observe the effect. There are four distinct provisions of the trust deed, any one of which, being considered part of the assignment, will avoid it:

First. Speaking of the property conveyed, it says, "until demanded by the said trustee, *said party of the first part shall hold the same* subject to this deed of trust." By the very terms of the deed, a demand by the trustee before the 1st day of December following (that being the date of the secured debt's maturity) was not possible, except on the contingency that the property should become endangered as a security; in which event the trustee was empowered (not required) to take possession. His honor below has pointed out that, since the property was real estate, the contingency excepted could hardly happen; but even if it could and should it was discretionary with the trustee whether to take possession or not. I claim that here is a direct retention to

his own use by the assignor, for a period of at least eight months, of a very material part of the property assigned, and that the assignment is thereby avoided.

Burrill on Assignments, sec. 203.

Harman *vs.* Hoskins, 56 Miss., 142.

Secondly. Speaking of the disposition of the proceeds of sale, if a sale should be made by the trustee, the deed says, "and, if there be a surplus, such surplus *shall be returned to the party of the first part*—not to the assignee. Nor is this a mere dealing with an imaginary surplus. The deed shows that the debt secured was $1,000, while the property is valued in the assignment at $1,200. It is a shallow subterfuge to claim that the deed of trust was executed *before* the assignment, and therefore the direction as to disposal of the surplus was proper. It is too evident that the two instruments were in fact one transaction and arrangement; and the very assignment says that the lands assigned are assigned *subject* to the deed; wherefore, by the assignment, the deed is sufficient throughout. The assignee, who takes by the assignment, is bound by its terms and *consents* that the balance be not paid to him, but to the assignor.

Attention is further called to the fact that the very debt secured by this trust deed is also placed in the list of preferred creditors, whereby if before sale under the trust deed there had been any distribution, by so much would that debt have been diminished and the surplus reserved to the grantor enlarged.

Burrill on Assignments, sec. 206.

Thirdly. Speaking of the conditions under which the trustee may sell, the deed says, "Should the party of the first part promptly pay the above-stated indebtedness on or before the 1st day of December, 1882, then this instrument to be void; but, in default thereof, the said trustee, *at the written request of the party of the second part*, or their legal

representatives or assigns, shall take possession," &c., &c. Here it is not the default which authorizes the trustee to sell, but the request of the creditor, for the making of which no limit of time is fixed, or any security given to the general creditors (or to the purchasers under any assignee's sale) against an indefinite postponement. The whole matter is committed absolutely to the creditors' discretion, with 12 per cent. interest accumulating, a very satisfactory income to them, so long as there was any margin of value whatever in the property, as, in fact, the property was not sold until three months after it might have been. (*Transcript, p.* 75.)

Meyer *vs.* Shields, 59 Miss., 107.
Burd *vs.* Smith, 4 Dallas, 76.
Burrill on Assignments, secs. 214 to 217.

Fourthly. This last provision avoids the deed and the assignment for another reason, it hinders the bank of Sardis itself in the collection of its debt. The bank could not collect through the assignee, because the property is put out of his hands; nor can it direct the trustee, since by the very terms of the trust the direction to sell must be given not by the creditor bank, but by the joint action of all the sureties. No sale could be made except by their consent, or by an appeal to the courts. We cannot speculate on the possibility that the sureties might act properly, the deed clearly puts it in their power to withhold the property from the creditor, and is most clearly, for that reason, calculated to hinder and delay him his collection.

Authorities cited above.

Generally, now, "it will not do to say," remarks the learned judge below in his opinion, "that the property might have been sold subject to the trust deed, for in that event the value of the interest sold would be too uncertain for the purchaser to pay any but a very small price for it." And

such sale would be further hampered by the provision that the trustee could only sell after taking possession before advertising, which seizure by the trustee, for at least ten days, perhaps in the very height of the business season, might prove very disastrous to the occupying purchaser, and yet leave him without remedy, since he bought subject to the trust deed.

There is another point of view from which to consider this case:

It is a bill of complaint in equity to enjoin the prosecution of certain attachments. Complainants allege in their bill that the assignment was made in good faith and free from all fraud, and on such allegations predicate their demand for affirmative relief. These allegations are denied by the answer under oath; whereby, granting to complainants the ordinary rule that a conveyance is presumed to be free from fraud, still the burden of establishing the allegations denied is thrown upon them by such sworn denial. Still more, when the testimony in the cause shows facts which cast the greatest suspicion upon the assignment.

Now, the testimony shows that the grantor was hopelessly insolvent; that for some ten days prior to making the assignment he knew of his insolvency and contemplated the assignment (this by his own testimony); that during the interval the goods and merchandise were sold, mostly for cash, and at low prices; that preparatory to the assignment he paid his wife the sum of nine hundred dollars for a debt owed her since 1852; that his wife repeatedly took money from the till during this interval; that more goods than usual were taken from the store to his residence; that he made payments to his clerks, to whom he had gotten largely in arrears, &c.

The burden of proof being on the complainants to establish the *bona fides* of the assignment, they yet failed to explain these circumstances of suspicion. Especially is this true

in regard to the connection of the assignor's wife with these matters. As remarked by the learned judge below in his opinion: "If all this was fair, it might have been explained by the testimony of Mrs. Gunter. She was present when her husband's deposition was taken, yet she was not examined. The rule is that transactions between husband and wife are to be strictly scrutinized, and if there are slight circumstances going to impeach the *bona fides* of the transaction the burden of proof is thrown upon those claiming under it to establish the fairness and validity of the transaction. Coupled with this is the rule that when suspicious circumstances are shown against the transaction, and the party required to explain it if fair and valid—has proof which could be produced to establish its fairness and he fails to do so—the presumption is that the transaction was unfair, or that it is to be taken against its fairness. This rule applies to the facts of this case with no little force. Notwithstanding the assignor in his testimony refers to the records of the courts in Alabama and in this State, it was the duty of the complainants to produce the proof, and not that of the defendants to disprove it." The judge then proceeds to consider the deed of trust which was executed in connection with the assignment, and concludes by finding the assignment fraudulent in fact, so far as the grantor is concerned. I submit that this Court, on the testimony, will not disturb that finding. What is the effect of it as against the creditor?

This assignment was executed in Mississippi by a Mississippi debtor to a Mississippi assignee. It is, therefore, a Mississippi assignment, the validity of which must be tested by the Mississippi law. The fact that the appellants are citizens of Tennessee does not alter this rule.

Livermore *vs.* Jenckes, 21 How., 126.

The rule is well settled in Mississippi that the assignee in an assignment to secure antecedent debts is not a *bona fide*

purchaser for value, and that if for any reason the assignment is fraudulent and void as to the grantor the beneficiaries cannot take under it, since it is also void as to them.

Craft *vs.* Bloom, 59 Miss., 69.

These questions, arising under sections 1293 and 1294 of the Mississippi code of 1880, the decision of the Mississippi supreme court on this point will be deferred to by this court according to the well-settled rule.

Respectfully submitted,

EDWARD MAYES,
Attorney for Appellee.

12-183

IN THE

Supreme Court of the United States.

October Term, 1886.

ESTES DOAN AND CO.
vs.
S. H. GUNTER, BICKHAM AND MOORE *et al.*, } No. 285.

BRIEF FOR APPELLEES BY W. V. SULLIVAN.

The appellants, claiming as preferred creditors of S. H. Gunter, under a general deed of assignment executed by him about *midnight* of the 25th of March, 1882, filed their bill in the court below to enjoin certain creditors, therein named as defendants, from prosecuting their attachments *against Gunter;* and also asking that a receiver be appointed to take charge of and administer the estate according to the terms of the deed of assignment. (Record, pp. 1, 6).

Gunter is not a party to that suit at all (record, pp. 1–6) and has never been.

No injunction was asked or granted against Spain. (See record, pp. 6, 21, 80).

The *final decree* simply *dissolved the injunction* (record p. 80) which was then in force only against *Bickham* and *Moore*, complainants having, therefore, dismissed their bill as to all the other defendants who were enjoined (record p. 79).

The only contest then is, whether this decree dissolving the injunction as to Bickham and Moore, sole remaining defendant enjoined, is erroneous.

First. Bickham and Moore claim but $3,000, and the contested amount is therefore less than the jurisdiction of this court (record, p. 3).

As to Spain, pro-confesso was entered, and this was not defeated *by dissolving the injunction* as to Bickham and Moore.

Second. The attachment suit against *Gunter* should not have been enjoined, but Estes and Doan should have intervened and claimed the property seized, if they desired it, and permitted *the attachment as to Gunter to proceed.*

Third. The assignment was fraudulent, and its execution was not only a ground of attachment, but no rights accrue to complainants under it.

If the intent of the *grantor* was to defeat or defraud, hinder or delay his creditors, or any of them, in executing it, then this vitiates the assignment, whether participated in by the assignee or beneficiaries, or even known to them or not. (See 59 Miss. Rep., p. 69). The assignee does not occupy the position of a *bona fide* purchaser for value, under the Mississippi law, by which this assignment must be construed. (See 60 Miss. Rep., p. 362.)

The assignment was fraudulent in law:

Because while it *purported* to convey all Gunter's property (record, p. 7) it did not—his schedules which set forth the property (record, p. 9–19) do not contain any *cash* at all, neither the $80 admitted (record, p. 74, bottom,) by Gunter to be on hand, nor $90 claimed to have been paid (record, p. 72) to Mrs. Gunter, nor $20 claimed to have been paid W. A. Dugger (record, p. 74, top) but denied by him (record, p. 52, 5th answer), nor the barrels of sugar, sacks of coffee, flour, lard, oil, two bales of dress goods, fine cassimere trimmings, &c. (record, pp. 57, 52).

It provided that creditors whose names were omitted from the schedules should also participate in the distribution of the funds (record, p. 8); and yet no *time* was fixed or limited within which these creditors were to come in, present and establish their claims, nor the *mode* in which these claims shall be ascertained and established, or *who* should do this; still, no distribution could be made until all this should first be done.

E. A. Carlton is certainly one such omitted creditor (see record, p. 58, answer to 3d X Int., p. 57, answer to Int. 8.) He is *not scheduled* as a creditor (record, pp. 18, 19). How could the assignee ever know when all the creditors were in so as

to make distribution in the absence of any limitation of time.

This in my opinion is fatal to the assignment.

See Moyer *vs.* Shields, 59 Miss. Rep., 107

The trust deed to Hall is part of the assignment, and both must be construed together; it is referred to in the assignment (record, p. 9), and the property contained in the trust deed is conveyed in the assignment, *subject* to all the provisions and limitations in the trust deed contained, one of which is that *Gunter* shall still retain possession and use of the property—storehouse and lots—not only until December 1, '82, but until called for thereafter by Hall, trustee, and in no event should it be sold in less than ten days after the 1st of December, '82 (record, p. 76)

These two instruments convey same property to secure same debt, executed at same time, relate to each other, are in law parts of one instrument.

The *assignee* is directed to sell the assets and pay the *bank debt* as *prepared* debt.

J. G. Hall, *trustee*, is directed to sell (after 10th of December, '82,) the property described in the trust deed to pay *same debt*. If *Hall* should pay it, still the assignee is also directed to pay it; he has no discretion in the matter. See schedule E, p. 18, and assignment, record p. 8, where the assignee "*shall* pay *all and singular* the debt set forth in schedule E, class No. 1."

Gunter being *insolvent* this provision was fraudulent. Again it was *specially provided* in the trust deed that if the property sold for more than enough to pay the bank debt the overplus should be paid, *not to Gunter's creditors* nor to the assignee for them, but to *Gunter himself* (record, p. 76).

Burril on Assignments, § 203.

Although the assignee is directed to *sell the property and get in the debts* due estate *with reasonable diligence*, he is *not* required to *distribute* the proceeds or *pay* the same *over to the creditors of any time short of doomsday* (record p. 7, bottom

of page, p. 8). This is perhaps explained by the fact that the assignee was *insolvent*, the assignor's confidential friend and adviser, and contemplated future partnership with *Mrs. Gunter*, with Gunter as clerk.

The property to which Gunter's creditors were entitled was assigned to an insolvent, the close friend of Gunter, his book-keeper, his wife's partner, with direction to *get in* all the assets, but no time limited in which he shall *pay it out* to the creditors. This in my opinion is fatal to the assignment.

It was fraudulent, *in fact:*

In the first part of the instrument it recites all the grantor's prayer is conveyed except exceptions (record, p. 7); in the schedules (record, pp. 9–19) it sets out specifically what is conveyed.

There is *fraudulently withheld* from the schedules—

Cash admitted by Gunter on hand.....	$80 00
" claimed by Gunter to have paid Dugger.....	20 00
" taken in for ten days previous to assignment (pp. 57, 72).....	
Two bales fine dress goods (record, p. 57).....	
Large amount of goods from center counter (record, pp. 52, 57).....	
Cash claimed to have paid wife (record, p. 72).....	900 00
Use of possession of storehouse and lots (R., p. 76)..	

The wife's debt is a myth, quite serviceable in this emergency, a *convenient creditor*. It is true no note induced *this debt*, nor was there any *account of it* in the books or *elsewhere*, no receipt was given, still its *age* ought to secure for it some consideration.

Twenty-eight years required to warn Gunter that he should pay his wife. *If an honest debt why get lawyers' advice to pay it?* Did that make it honest? But then she was taking money from the cash drawer all the time (record, pp. 57, 53). Then the debt and the money to pay it was "all in the family," that was the *beauty* of it (record, p. 72).

Why was the assignment so drawn as to permit the assignee to *keep* the proceeds of the assets *indefinitely?*

The assignee was *insolvent* (record, pp. 62, 64, answers to Ints, 1, 2, 3, 4), was Gunter's *friend* and *confidential adviser*.

Gunter fails 25th of March, '82. Spain is in business with *Mrs. Gunter, November*, '82.

Gunter says Mrs. Gunter had nothing but some *furniture* outside of the $900 paid her (record, p. –); that she spent this $900 for family expenses (record, p. 72, X 17). Yet on *4th* of *November*, '82, Spain and Mrs. Gunter pay $500 *cash* on Ballentine debt (record, p. 66, X Int. 30), nice profit in *four days*. Gunter is clerk for his wife and friend, Spain (record, p. 57, Int. 15).

Mrs. Gunter was taking money continually out of cash drawer just before assignment (record, p. 57, 10th Int., p. 53, 7th Int.). No account was kept of it. Mrs. Gunter was present and heard this testimony (record, p. 57), yet she does not testify and deny, or offer any *explanation of all these* transactions.

Counsel for appellant, on last page of his brief, 4th division, in effect admits that the assignment *as to Gunter* was *fraudulent*, but says appellants were *not aware of it*. This can not avail, as *Gunter's* fraudulent intent vitiates it, regardless of their good faith.

This is the law in Mississippi, and is so conceded in counsel's brief in the *last* paragraph, and then he cites 118 U. S. Rep., p. 3, as authority to this court to hold otherwise; forgetting, it would seem, that the same rule which the court followed in 118 U. S. (*adopting* and *following* the decisions of the supreme court of Arkansas, *in passing upon the Arkansas statute of frauds*), requires that this court shall now follow the decisions of the supreme court of Mississippi in passing upon the construction of the Mississippi statute of frauds and a Mississippi assignment.

The decision of the distinguished judge in law was entirely sustained by the *law and facts* of the case, and this court will not disturb that decision.

Respectfully submitted,

W. V. SULLIVAN,
Of Counsel for Appellees.